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Comment

The Pennsylvania Adoption Act of 1970: Progress and Portents

INTRODUCTION

The Pennsylvania Adoption Act of 1970, effective 1 January 1971, consists of six articles by which the preceding Adoption Act as amended is "repealed absolutely," along with "all other acts and parts of acts . . . insofar as they are inconsistent" with this Act.¹ Though there are varied substantive changes which will be dealt with *infra.*, one prominent feature of the new Act is worthy of note at the outset. From the lengthy, sometimes unclear paragraphing of the previous act has come a concise statement of the law in the pattern of the Estates Act of 1947. This structural format is, in itself, laudable were nothing else accomplished. A great deal has been accomplished, however, and this paper shall cover at some length a number of these accomplishments.

Although it is difficult to sever the various parts from the whole, it is clear that Articles III and IV are the heart of the substantive provisions of the Act. As a result, the scope of this paper shall be limited to an analysis of those articles, the changes they accomplish, and the ramifications of those changes to adoption practices in Pennsylvania.

Article III, entitled "Proceedings Prior to Petition to Adopt," is divided into four components. Provision A deals with voluntary relinquishment of parental rights to a child under the age of 18 years. Under this provision, the subsequent recipient of custody may be either an individual intending to adopt the child or an agency. Provision B treats the problems of involuntary termination, grounds for such termination, and the method of its accomplishment. Part C deals with the effect of the decree of termination; and D provides for the reporting of intention to adopt, intermediary's reports, and investigation.

Article IV treats the adoption proceeding itself. Divided into three sub-headings, this article provides for requisite petitions, consents, and conducting of hearings.

1. Act of July 24, 1970, P.L. —; Act No. 208, PURDON'S PA. STAT. ANN. tit. 1, § 601(a) and (b) (Supp. 1970). When cited hereafter, references will be noted as "Pa. Adoption Act of 1970" with appropriate sections cited.

The two Articles are procedurally intertwined. To discuss one is to discuss the other. However, in the interest of clarity this paper shall proceed, to whatever degree possible, from the sections of Article III to those of Article IV. Where this is not workable, cross-references to the other Article and sections will be limited to those portions immediately relevant and logically unseverable. With these introductory limitations aside, a discussion of the Act itself is in order, commencing with Article III.

ARTICLE III

As noted above, Article III—"Proceedings Prior to Petition to Adopt"—begins with sub-article A dealing with voluntary relinquishment of parental rights. These rights may be relinquished either to an agency or to an individual. Section 301 provides the method for relinquishment to an agency. This section corresponds closely to section 1.1 of the Adoption Act of 1925 added in August 1953 and amended in 1961.² Under section 301, the requirements of the natural parents' petition and the 5-day custody of the child under 18 are maintained. In addition, the agency is still required to join in the petition. In contrast, however, section 301 requires the joining agency to aver in the petition that it consents "to accept custody of the child until such time as the child is adopted."³ It is not readily apparent why this provision was added to the information contained in the petition. Under the provisions of the earlier act, if termination were granted, the decree of the court *directed* the transfer of custody to the agency without more. It would appear that by the simple expedient of having had custody of the child for 5 days, the agency was presumed to consent to accept further custody by joining in the petition. According to section 321 of the new Act, the effect of a decree of voluntary termination is to award custody of the child to the agency "consenting to accept custody" with no more difficulty than under the old section 1.1. It would seem then that this provision is not necessary or even desirable. Apparently, as the law now stands, the court could, at the hearing, terminate the parental rights and duties of the petitioners only to have such a decree nullified on the technicality that the agency had neglected to give its express

2. Act of April 4, 1925, P.L. 127, § 1.1, added August 26, 1953, P.L. 1411, amended 1961, PURDON'S PA. STAT. ANN. tit. 1, § 1.1 (Supp. 1970). When cited hereafter, references will be noted as "Pa. Adoption Act of 1925, as amended," with appropriate sections cited.

3. Pa. Adoption Act of 1970, § 301.

consent to accept custody of the child. The introduction of this ambiguity is unwarranted and the addition of express consent seems to be of no advantage over the older provisions. Simply by joining in the petition the agency so filing should lose its discretion to refuse custody—whether expressly consenting or not—in the interest of efficient administration under section 301. There is one possible justification for the “safeguard” of the consent proviso. With the expanded definition of agency found in section 102 (2) of the new Act the expression of consent to accept custody may be designed merely to impress upon the agency the solemnity of their undertaking.⁴ Even accepting this hypothesis, however, the provision does not seem to add any noteworthy safeguard.

Section 302 of the new Act provides a radical change to the process of voluntary termination. This section provides, *inter alia*, for awarding custody of a child to an individual. Under 302, any individual who has had exclusive care of the child for a minimum of 30 days, has filed the requisite report of intention to adopt under sections 331 and 332, and has filed a separate consent to accept custody of the child, may be awarded custody in a voluntary relinquishment proceeding.⁵ In such instance, the effect of a decree awarding custody is to terminate forever the natural parents' *rights* in the child.⁶ This leaves unchanged the duty of that parent toward the child until final adoption. The natural parent still bears the obligation to support the child although parental rights accrue immediately to the person receiving custody.

Such a decree results from a hearing provided for by section 303, in terms identical in effect to those of the previous Act. The hearing must be private and held not less than 10 days after the filing of the petition. Upon a finding of whether or not termination shall be allowed the court may issue its decree. The effect of the decree is set out concisely in section 321, rather than incorporated in an unwieldy single paragraph as in section 1.1 of the old Act. Assuming termination is decreed,

4. Compare Pa. Adoption Act of 1925, *as amended*, § 1(a), and Pa. Adoption Act of 1970, § 102(2). Pa. Adoption Act of 1925, *as amended*, § 1(a):

“Approved Agency or Institution” means a county institution district or an agency or institution incorporated under the laws of the Commonwealth of Pennsylvania and approved by the State Department of Welfare.

Pa. Adoption Act of 1970, § 102(2):

“Agency” means any incorporated or unincorporated organization, society, institution, or other entity, public or voluntary, which may receive or provide for the care of children, supervised by the Pennsylvania Department of Public Welfare and providing adoption services in accordance with standards established by the department.

5. Pa. Adoption Act of 1970, § 302.

6. *Id.* § 303.

the effect of the decree is as follows. All parental *rights* in the child are terminated when the recipient of the child is an individual. When the recipient is an agency, the termination goes to both rights *and* duties of the parent. In either case, however, the rights of the natural parent(s) are extinguished completely and forever and the agency or person receiving custody stands *in loco parentis* to the child. Among his or its powers are now listed a representative group of capabilities which greatly expand the explicit limitations of the previous Act. Under section 1.1 of the old Act the agency was awarded custody but was expressly authorized only to give consent to subsequent adoption of the child. The person or agency now stands in a more truly parental position. He or it may now give consent to the child's marriage, to psychiatric and surgical treatment, and is given "such . . . authority concerning the child as a natural parent could exercise."⁷

Thus, as can be seen, under the new Act the natural family entity may be terminated voluntarily with custody of the child awarded to an agency or to an individual. Because of the new recipients of custody, there is now provided the explicit differentiation of rights or concurrent rights and duties discussed above.

Sub-article B of Article III, entitled "Involuntary Termination," provides the most radical departure from the old Act. Under section 1.2 of the Act of 1925, as amended, the sole ground for involuntary termination of parental rights was abandonment. As defined in section 1(a) of that act, abandonment amounted to "conduct on the part of a parent which evidences a settled purpose of relinquishing parental claim to the child *and* of refusing or failing to perform parental duties." (Emphasis Added.)⁸ For the court to make such a finding, section 1.2 of the old Act detailed the manner in which such a proceeding should be commenced and by whom. The requirements may be summarized as follows. Section 1.2 applied only to persons under the age of 18 years. If such person had been in the care of an approved agency or institution for 30 days or longer, and had apparently been abandoned by its natural parents for 6 months or more, that agency was authorized to petition for a finding of abandonment and to request custody of the child. Upon the filing of such a petition, the court fixed a time for a hearing to be held not less than 10 days after the petition was presented. The natural parents were notified in writing by registered mail at his

7. *Id.* § 321.

8. Pa. Adoption Act of 1925, as amended, § 1(a).

or their last known address at least 5 days prior to such hearing date,⁹ and the court then determined the question of abandonment. Were abandonment found, the court so decreed and awarded custody to the agency, authorizing that agency to consent to later adoption of the child without further consent by or notification of the natural parents. Under the new Act the separate pre-adoption proceedings are wisely maintained but substantive and procedural provisions are greatly modified and expanded.

The new requirements for involuntary termination of the natural family status are found in sections 311, 312, 313, and 321. The most notable change initially is found in the wider variety of parties eligible to institute such proceedings. Those qualified now are:

- (1) either parent when termination is sought with respect to the other parent; (2) an agency; or (3) an individual having custody or standing *in loco parentis* to the child and who has filed a report of intention to adopt pursuant to section 331.¹⁰

The person seeking involuntary termination files his petition averring that he will assume custody pending adoption according to section 312. Under section 313 the court then fixes a time for hearing within the same time limitations found in the old Act. Notification requirements are modified in section 313. The old Act required that the parent be notified by the method mentioned above at least five days prior to the hearing. Now the parents whose rights are to be terminated are given 10 days' notice "by registered or certified mail to his or their last known address or by such other means as the court may require."¹¹ The hearing may then be held and a finding made of termination *vel non* of parental rights. That determination is to be made upon the finding of grounds provided in section 311. The grounds are three—a finding of any of which may end the rights of the natural parent or parents. They are:

- (1) The parent by conduct continuing for a period of at least six months either has evidenced a settled purpose of relinquishing parental claim to a child, or has refused or failed to perform parental duties; or (2) [t]he repeated and continued incapacity, abuse, neglect, or refusal of the parent has caused the child to be without *essential parental care, control, or subsistence* necessary for his physical or mental well-being and the condition and causes of the *incapacity, abuse, neglect, or refusal cannot or will not be*

9. *Id.* § 1.2.

10. Pa. Adoption Act of 1970, § 312.

11. *Id.* § 313.

remedied by the parent; or (3) [t]he parent is the presumptive but not the natural father of the child.¹² (Emphasis Added.)

These provisions are a substantial departure from the old Act's requirements. The sole ground for such termination under the old Act—abandonment—as defined in section 1(a), corresponds to the first ground of the new Act, but with the following modifications. In the old Act the two phrases used in the definition of abandonment, *i.e.*, “settled purpose . . .” and “refusing or failing . . .”, were connected by the conjunctive “and.” As a result, abandonment was construed as largely “a matter of intention”¹³ on the part of the parent to relinquish parental claims *and* to refuse or fail to perform parental duties. Both had to exist to show abandonment. Under the new statute, the substantially identical wording of (1), above, has been connected by the disjunctive “or.” This would seem to indicate a legislative intent to broaden considerably the grounds for involuntary termination. This is more emphatically so when this ground is read in the context of the remaining provisions of section 311. The reason for such a purposeful expansion must be found in the time-honored “heavily weighted interests of the child.”¹⁴ This overriding concern pervades the other grounds as well. The second ground displays this great concern in near-pristine form. The inclusion therein of terms such as “abuse,” “neglect,” and “refusal” are readily acceptable as *prima facie* indications of parental unfitness. However, twice mentioned within that single provision are terms dealing with “incapacity” and conditions which “cannot” be remedied by the parent. The ability of the courts to terminate a parent's rights to his child because of that parent's inability to provide “essential parental care, control or subsistence,” or the parent's incapacity to remedy the conditions or causes of such a plight, will provide the framework for many extremely difficult decisions in our courts.

This is an area highly charged with emotion. It is not at all difficult to envision cases where it is clear that the child is lacking certain parental care and the deficient parent is simply incapable of correcting the condition. Of course, under the terms of the Adoption Act, the parent is in imminent danger of losing his or her child. What will be

12. *Id.* § 311.

13. *In Re* Adoption of Susko, 363 Pa. 78, 69 A.2d 132 (1949), *Adoption of Harvey*, 375 Pa. 1, 99 A.2d 276 (1953), *In Re* Adoption of Peter, 177 Pa. Super. 365, 110 A.2d 825 (1955).

14. Comment, *Improving the Adoption Process: The Pennsylvania Adoption Act*, 102 U. PA. L. REV. 759, 775 (1954). See also Infausto, *Annual Review of Decisions and Statutory Revisions Affecting Adoptions*, FAMILY LAW Q. Vol. IV, no. 2, June 1970.

the emotional impact of such a severance of family bonds upon the child? How overriding is the lack of control when balanced against a close family harmony which may exist in spite of the hardship? Is the "mental well-being" of the child more surely preserved by a termination of its parents' rights to it or by allowing the child to remain with its parent(s) in the face of deprivation of another sort? These are merely a superficial excursion through the myriad difficulties which will surely face our courts under this proviso. The terms of the Act carry their own portents. The gloom is lightened only by the inherent discretionary powers of the court. Section 311 provides only that the parental rights *may* be terminated upon the discovery of grounds which conform to the letter of this section. Nonetheless, this area will cause many a difficult duty to be laid upon the courts in this type of proceeding.

The final ground upon which a parent may involuntarily lose rights in his child provides further difficulties, albeit of a less moral and more legal orientation. Section 311(3) provides that a parent's rights in a child may be extinguished on the ground that he is merely the presumptive, but not the natural father of the child. The deceptively simple language read in conjunction with a provision of section 313 rapidly becomes more complicated. Section 313 treats of the hearing to be held on a petition filed pursuant to section 312 requesting involuntary termination of parental rights. During such a hearing the natural mother of the child is declared to "be a competent witness as to whether the presumptive father is the natural father of the child."¹⁵ Because, under the provisions of section 312(i), one parent may file a petition to have the parental rights of the other terminated involuntarily; because section 311(3) provides the grounds; and because section 313 makes the wife competent to testify as to the natural father, the process by which the presumptive (but not the natural) father's parental rights may be extinguished might follow this pattern.

The natural mother and wife of the "father," as a party capable of filing a petition seeking the termination of the "father's" parental rights under section 312(i), so files, averring that she consents to accept custody until such time as the child may be adopted. The other parent is given the required 10 days' notice by registered mail pursuant to section 313. At the future hearing, the mother, now a competent witness to testify that her husband is merely the presumptive, but not the natural, father of the child by section 313, appears and so testifies. Upon this evidence

15. Pa. Adoption Act of 1970, § 313.

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the court *may* then decree the termination of the husband's parental rights.¹⁶ Should such a decree be issued, the mother can then arrange for the voluntary relinquishment of her own rights in the child and allow the adoption without the further consent of the husband whose rights have been terminated.¹⁷ This hypothetical process clearly presents serious questions. Implicit in these facts are constitutional problems of notice, or lack thereof, in violation of the due process of law requirement, and deprivation of "property" in violation of the same due process mandate.¹⁸ It is felt, however, that digression into the constitutional issues raised is beyond the scope of this paper. The simple mention of such problems serves. Another more mundane concern is not so easily sidestepped, however. What recourse has the husband in such circumstances? Even were he to be served personally and appear to contest the proceedings, if, indeed, he is but the presumptive father, he is defenseless. It may prove small solace to him that the court is not *required* by the terms of the Adoption Act to terminate his rights if to do so may not serve the best interests of the child. If, on the other hand, the husband claims to be natural father of the child the question as to his competency to testify in his own behalf is raised. This entails a reconsideration of the concerns dealt with in the recent case of *Commonwealth ex. rel. Leider v. Leider*.¹⁹ In light of the inclination there shown toward liberalizing the so-called "non-access" rule by allowing parents and a former spouse to testify concerning non-access—even at the risk of bastardizing the child—and the specific statutory provision in the Adoption Act of 1970 allowing the wife-mother to testify, it would seem that the husband here stands a good chance of being permitted to testify in his own behalf in such a case. His claim to be the natural father against his wife's contrary claim would certainly not be in derogation of the policy behind the rule which prevents such testimony. If anything, his testimony would be directly in harmony with the preservation of the presumption of legitimacy of children born in lawful wedlock.²⁰ Were he competent to testify and claim to be the natural father, he could hinder substantially his wife's attempt to terminate his parental rights, if it were merely her word against his, for the presumption of the child's legitimacy would then be in his favor.

16. *Id.* § 311(3).

17. *Id.* §§ 321 and 414.

18. For discussion see Goldman, *Adoption: New Law, New Problems*, 59 *DICK. L. REV.* 57, 59 (1954-55).

19. *Leider v. Leider*, 434 Pa. 293, 254 A.2d 306 (1968).

20. *Id.*

Lest this concern be dismissed out of hand as too speculative or frivolous, it is worthy of note that such proceedings have occurred and have been followed in other jurisdictions. In *Burtis v. Weiser*²¹ the plaintiff-husband married a woman visibly pregnant two days after her divorce from her previous husband. Plaintiff accepted and supported the child after its birth. This support continued in the form of allotments to his wife which he had sent while he was apart from her during one year of overseas military service. While he was gone, plaintiff learned that the wife had allowed the child's adoption. Plaintiff then challenged the validity of the adoption on the ground that it had been allowed without his consent in violation of Article 46a, section 6 of the, then, Texas Adoption Statute.²² The validity of the adoption was upheld by the Court of Civil Appeals of Texas on the basis of that court's acceptance of the presumption that the "husband of a woman at the time of the conception of a child is the father of such child" rather than the presumption that the husband at the time of birth is the child's father.²³ Although this decision rested upon the acceptance of one presumption over another, the result is noteworthy. In order for the court to have reached this decision it seems clear that testimony must have been permitted in evidence to show that a child born in lawful wedlock was not the natural child of the married couple. The Texas court was led from that point to a choice of presumptions. The hypothetical husband in Pennsylvania has not even the aid of a possible contrary presumption. There is no need for indulging in evaluation of conflicting presumptions. The mother's competent testimony removes any need for such resort. The question is not "who else might the natural father be?" but rather simply, "is this husband the natural father as well as the presumptive father?" The testimony can readily—perhaps too readily—answer that question. Granted, it is still a question of meeting a certain burden of proof. However, if the husband is not the natural father and knows it, there remains no burden upon the wife. Her testimony is, in effect, conclusive. The husband can rely solely upon the discretionary power of the court to refuse to allow termina-

21. *Burtis v. Weiser*, 195 S.W. 2d 841 (Tex. Civ. App. 1946). For a discussion of this case see 95 U. PA. L. REV. 216 (1946).

22. 1 TEX. ANN. REV. CIV. STAT. (Vernon, Supp. 1946) Art. 46a, § 6, provides in part, "No adoption shall be permitted except with the written consent of the living parents of the child. . . . In case of a child not born in lawful wedlock, the consent of the father shall not be necessary." [The provision of this statute has since been amended.]

23. *Burtis v. Weiser*, *supra* note 21, at 843.

tion of his rights, because to do so would not be in "the best interests of the child." There is no need further to belabor the problem. That it exists, must be recognized for the danger that it represents, and must be reckoned with carefully, is sufficient.

Having thus considered some inherent problems regarding the grounds for involuntary termination of parental rights, it is now useful to revisit the provisions of section 321 to determine the effect which a decree of termination has under involuntary termination proceedings. The provisions of section 321 include the effects of a decree of termination of parental rights whether voluntary or involuntary. There is no explicit difference in effect under either proceeding. The determinative factor again is the recipient of custody. An award of custody, under section 312 proceedings, to an individual parent²⁴ or an individual having custody or standing *in loco parentis*, who intends to adopt the child,²⁵ does not relieve the delinquent parent of his or her parental duty but only the parental rights. Where the recipient is an agency,²⁶ the defaulting parent or parents are relieved of his or their parental duties with the coexistent loss of parental rights.

Interspersed in the preceding discussion have been references to certain requisite reports and petitions. Mention of them has been as prerequisites without discussion of their form and/or content. It is in order at this juncture to discuss these reports and to reweave them into the fabric of the provisions to which they apply.

Under the terms of the new Act dealing with voluntary termination there are two possible recipients to whom parental rights may be relinquished—an agency,²⁷ or an individual who has had custody of a child for 30 days and has filed a report of intention to adopt.²⁸ Under the provisions of section 312 are set forth those persons to whom custody may be awarded following involuntary termination, one of whom is the individual who has filed a report of intention to adopt in accordance with section 331. Because of the resulting importance of this report a short discussion of its content and purpose follows.

This report shall be filed by both individuals and agencies acting as intermediaries placing a child under 18 years of age for adoption. This written report must be filed under oath *to the court* in which the adop-

24. Pa. Adoption Act of 1970, § 312(i).

25. *Id.* § 312 (iii).

26. *Id.* § 312 (ii).

27. *Id.* § 301.

28. *Id.* § 302.

tion petition will be filed. The adopting parent or parents shall then be given notice of the filing of the report and the date. The information required to be included in this report is included in a footnote because of its importance and scope.²⁹ In addition to this information, in accordance with section 334 there shall be attached to the report as exhibits: (1) a birth certificate or certification of registration of birth of the child; (2) all consents required by section 411(3), (4) and (5) (discussed below); and (3) a certified copy of any decree of termination made by a court other than the court in which the petition for adoption will be filed. These requirements, while clear and explicit, may present problems to the adopting parent(s). If an agency intermediary is involved in the placement of the child, the entire background of that child is information unavailable to the adopting parents. In the parents' report of intention to adopt only the name and address of the agency and the circumstances surrounding the receipt of custody by the adopting parents are required by section 331. The report of the agency intermediary is filed *to the court* and the results of any investigation (section 335 below) likewise go to the court. The adopting parents are completely uninformed as to the history of the child whom they will adopt. The question is simply whether or not this is desirable. If the child is extremely young, knowledge of its background may not be helpful to the adopting parents in raising the child. However, what of the child who is, for example, approximately five years old? It is commonly accepted fact that the psychological make-up of a person is to a great

29. *Id.* § 333 which provides that the following information is to be set forth:

- (1) The name and address of the intermediary;
- (2) The name, sex, racial background, age, date and place of birth, and religious affiliation of the child;
- (3) The date of the placement of the child with the adopting parent or parents;
- (4) The name, racial background, age, marital status as of the time of birth of the child and during one year prior thereto, and religious affiliation of the parents of the child (or of the mother only in the case of an illegitimate child);
- (5) Identification of proceedings in which any decree of termination of parental rights, or parental rights and duties, with respect to the child was entered;
- (6) The residence of the parents or parent of the child, if there has been no such decree of termination;
- (7) A statement that all consents required by section 411 (3), (4) and (5), are attached as exhibits or the basis upon which such consents are not required;
- (8) The fee or expenses paid or to be paid to or received by the intermediary or to or by any other person or persons to the knowledge of the intermediary by reason of the adoption placement;
- (9) A full description and statement of the value of all property owned or possessed by the child; and
- (10) A statement that no provision of any act regulating the importation of dependent, delinquent or defective children has been violated with respect to the placement of the child.

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extent dominated by his experiences in very early life. Accepting this premise, it is difficult to see the benefit of withholding the child's background from the parents who will raise him. How can an adoptive parent be expected to understand and correct his adopted child's problems when he is unable to make any rational evaluation of their causes? The difficulty of child-raising is infinitely increased by the parents' lack of knowledge of their child's psychic exposure and experiences. The difficulty facing these parents is clear, but what of the effect upon the child? As indicated above, the parents may well be hamstrung in their parental duties by their lack of knowledge of the child's background. This unnecessary disability strips from them some portion of their power to guide the child and help him to healthy development. In short, the child may well receive less than the complete help which his adoptive parents might have been able to give him had they but known his background. The unfairness to the parents pales beside the possible damage to the child—damage which might have been prevented. The apparent regard for evenhanded administration of adoption might well stand reconsideration in view of these fears. Another effect of this situation might well be the promotion of the use of placement without an intermediary whenever possible, and to avoid particularly placement by an agency. Because a prospective parent is undoubtedly concerned with any adopted child's background, it is in the parent's best interest to seek placement by means which afford him the greatest access to knowledge of the child—an individual intermediary or no intermediary. It is suggested that this inclination might well be contrary to the intent of the legislature when passing these provisions. Because of the traditional fear of individual placement, it appears inconsistent to promote, in effect, this method over the use of agencies.

The final provision of Article III is section 335 which provides that upon filing of the section 331 report of intention to adopt, the court shall cause to be made an investigation directed at the background of the child and of the adopting parents. This section leaves virtually unchanged the investigation requirements of the previous Act as provided in the final paragraph of section 1(c). As a result, it is felt that further coverage here would not be of value.

The preceding pages have covered with varying emphasis the provisions of the Adoption Act of 1970 which encompass pre-adoption proceedings. It is now appropriate to survey the sections of Article IV dealing with the adoption process itself.

ARTICLE IV

Sub-article A provides for the petition for adoption and sections 401 and 402 therein detail respectively the information and attached exhibits required. These requirements are clearly set out and in large measure simply codify the previous Act's section 1(d). The single notable difference has been adverted to above, dealing with the information available to petitioning adopting parents. The change appears in paragraphs (2) and (5) of section 401.

Under the Act of 1925, as amended, the petition for adoption included, *inter alia*, "the name, color, age, date, and place of birth, places of residence since birth, and religious affiliation of the person proposed to be adopted."³⁰ This information under the new Act is embodied in the report of the intermediary,³¹ or the report of intention to adopt.³² Paragraph (2) of section 401 now requires that the adoption petition set forth "that the reports of sections 331 and 333 have been filed, if required."³³ Paragraph (5) then states "if there is no intermediary or if no report of the intermediary has been filed, or if the adoptee is over the age of eighteen years, all vital statistics and other information enumerated and required to be stated of record by section 333 . . ." shall be set forth.³⁴ The result is that the information previously required to be contained within the petition itself, under the above circumstance, may now be found in the various reports, with the attendant dangers discussed earlier (the lack of information available to the adopting parents).

Sub-article B deals with consents to adoption, and the four sections thereunder clearly lay out the requirements as to when consent is and is not required, and whose consent is involved. These requirements are the logical result of the provisions of Article III, reflecting the revisions of that article. Where, however, Article III provisions have not so required, the requirements as to consent remain as previously provided by sections 2, 2.1, and 2.2 of the Adoption Act of 1925, as amended. The most substantial change in consent requirements deals with the consent of the natural father. Section 411(3) provides:

The consent of the husband of the mother shall not be necessary if, after notice to the husband, it is proved to the satisfaction of the

30. Pa. Adoption Act of 1925, *as amended*, § 1(d).

31. Pa. Adoption Act of 1970, § 333.

32. *Id.* § 331.

33. *Id.* § 401(2).

34. *Id.* § 401(5).

court by evidence, including testimony of the natural mother, that the husband of the natural mother is not the natural father of the child.³⁵

This language, of course, reflects the provisions of Article III, sections 311(3), 312, and 321 as discussed above. In the absence of such proof, however, the presumption of legitimacy controls the situation and "the consent of a former husband of the natural mother shall be required if he was the husband of the natural mother at any time within one year prior to the birth of the adoptee."³⁶

The remaining provisions dealing with consent appear to be in accord with those requirements of the previous Act with only minor modifications. The dispensing with consents under section 413 corresponds to the provisions of section 2.1 of the previous Act with this minor change. The consent of the adoptee, alone, is required when he is over 18 years of age and has lived with the adopting parent or parents for at least three continuous years.³⁷ The previous residency requirement was ten years.³⁸

Section 414, which deals with when parental consent is not required, corresponds with section 2(c) of the old Act but simply reflects the terminology of the new Act and the expanded grounds for loss of parental rights under section 311.

Sub-article C, entitled, simply, "Hearings," comprises five sections (421-425) covering respectively, notice, place of hearing, attendance at the hearing, testimony and investigation, and religious belief. Under section 3 of the previous Act the hearing was to be held not less than ten days from the time of the filing of the adoption petition, while under section 421 no specific time is mandated. Notice of these proceedings shall be given "to all persons whose required consent has not been obtained" and such others as the court may direct,³⁹ and shall be made by personal service or by registered or certified mail or by such other manner as the court may direct. This method of notification does not necessarily apply to the adopting parents, however. They may be notified—if such notification is required—by the intermediary or someone acting in his behalf. Upon notification of all required parties, a hearing may be held either in private, or in open court, at the court's

35. *Id.* § 411(3).

36. *Id.*

37. *Id.* § 413(1).

38. Pa. Adoption Act of 1925, *as amended*, § 2.1.

39. Pa. Adoption Act of 1970, § 421.

discretion.⁴⁰ Those persons who must attend, and when their attendance is not required, differ somewhat from the requirements of section 3 of the Act of 1925. Thereunder, "the adopting parents or parent . . . and all the persons whose consent is necessary . . . and any person concerned individually or as a representative of an agency acting as an intermediary . . . must appear in person. . . ."⁴¹ The appearance of all these persons, however, could be dispensed with in the court's discretion if they lived outside the jurisdiction of the court or if the court deemed their appearance unnecessary—provided that the necessary consents were filed in writing with the court.⁴² Under section 423, however, the appearance of any person may be dispensed with should the court find that "their presence is unnecessary."⁴³ There is no explicit mention of the jurisdictional limitations of the previous provision. This latter omission may reflect the broadened scope of the venue provision of the new Act.⁴⁴ It could be that with more lenient venue provisions there will be fewer problems with the availability of persons concerned.

Once the hearing commences, section 424, entitled "Testimony; Investigation," outlines the procedure. This section provides an expanded version of the previous requirements under section 3 of the Act of 1925. That Act provided for the hearing of testimony as to the desirability of the proposed adoption and for the holding of an investigation by an agency or individual designated by the court. Presently required is "disclosure of all costs and fees of any type paid or to be paid to any person or institution in connection with the adoption, including the fees of any intermediary."⁴⁵ The precautionary reason for such a disclosure is clear and this requirement appears desirable. In addition, section 424 states that because, in nearly all cases, an investigation will already have been made, the court now has the discretion to "rely in whole or in part upon a report earlier made under section 335. . . ."⁴⁶ This also would seem a sound provision to provide for more rapid and orderly administration of adoption proceedings.

The final section of Article IV, section 425, maintains almost *verbatim* the previous admonition of section 1(d) of the Act of 1925 dealing

40. *Id.* § 422.

41. Pa. Adoption Act of 1925, *as amended*, § 3.

42. *Id.*

43. Pa. Adoption Act of 1970, § 423.

44. *Id.* § 202.

45. *Id.* § 424.

46. *Id.*

Comment

with religions of the adopting and natural parents. Section 425 states that:

Whenever possible, the adopting parents shall be of the same religious faith as the natural parents of the adoptee. No person shall be denied the benefits of this act because of a religious belief in the use of spiritual means or prayer for healing.⁴⁷

Whether or not this writer agrees with the wisdom of this provision, it is felt that further discussion here would not add to positions already espoused. In light of the controversy on the subject,⁴⁸ it is sufficient to note that the legislature has seen fit to perpetuate this provision.

CONCLUSION

Because the Adoption Act of 1970 is at this writing untested by the courts of Pennsylvania, and because adoption practice in this Commonwealth may be changed greatly by some of the Act's provisions, this article has been written. Though admittedly not an exhaustive study of the entire Act, it is felt that the treatment accorded the various provisions indicates and discusses the more substantive changes. The conceivable pitfalls and difficulties which the courts and practicing attorneys may encounter under the terms of the Act have been dealt with in terms of priorities arbitrarily set up the writer. Although others may devise their own sets of values, it is felt that those sections of the Act which are of most serious import have been dealt with and recognized as potentially troublesome areas in the use and interpretation of this Adoption Act of 1970. It is hoped that the coverage here provided will be of some service to the profession and will serve, at least, as a point of departure for those who will practice under this Act.*

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47. *Id.* § 425.

48. See, e.g., Litzenberger, *The Religious Factor in Adoption Proceedings*, 65 *DICK. L. REV.* 60 (1960), Lustig, *The Religious Factor in New York Adoption Proceedings*, 18 *SYRACUSE L. REV.* 825 (1966), and Hauser, *Adoption and Religious Control*, 54 *ABA J.* 771 (1968).

* For proposed new Rule 30 governing practice and procedure under The Adoption Act of 1970 and proposed forms, see *PCH. L.J.*, Vol. 118, no. 12, December 1, 1970, p. 22.