



# Post Adoption Contact Agreements (PACA)

April 2017

Vermont Juvenile Court Improvement Program (CIP)

This InfoBulletin covers Post-Adoption Contact Agreements (PACAs), which may be entered into in conjunction with a termination of parental rights proceeding.

## **PACA DEFINED**

Act 60, passed by the Vermont legislature in 2014, made major substantive changes to the Juvenile Proceedings Act. Included in the new provisions is a section that allows parents and intended adoptive parents to enter into enforceable post-adoption contact agreements (PACAs).<sup>1</sup> Prior to enactment of this statute, any agreement for post-adoption contact were “good faith” agreements – they could not be enforced by a court. The legislative intent behind 33 V.S.A. §5124, at least in part, is an effort to decrease the number of involuntary TPRs by giving parents an incentive - future contact with their children - to voluntarily relinquish their parental rights. When the law initially went into effect, PACAs could only be considered in cases where children were in DCF custody. The statute was amended in 2016 by Act 170 to include cases where children are under conditional custody orders with relatives or other non-parents. In Vermont, 120 PACAs were signed between August 2015 and late February 2017. The agreement becomes effective once the adoption is finalized.

## **DRAFTING THE AGREEMENT**

In cases where post-adoption contact appears to be a viable option, discussions regarding potential PACAs should start when a case plan goal changes to adoption. *The discussions should not occur right before a TPR hearing.* [DCF Policy # 196](#) directs the social worker to have discussions with parents and others involved with the family around issues such as: how the agreement will impact the future stability of the adoptive family; whether the parents and intended adoptive parents have a respectful relationship; whether the child may request that the communication or contact cease; and how much

and what form the contact might take. The Policy also reminds social workers that both parents and intended adoptive parents are vulnerable while PACAs are being discussed and warns social workers to “not apply pressure for families to decide in either direction.” This is particularly true for intended adoptive parents who often do not have an attorney to represent their interests in PACA negotiations. (Providing representation to intended adoptive parents in PACA negotiations is currently being discussed by the VBA Juvenile Law Committee.)

A family court form is available for drafting an Agreement for Post-Adoption Contact or Communication (hereinafter “Agreement”). The form sets forth what the parties are agreeing to, including the fact that the voluntary relinquishment of the parent’s rights and TPR order would remain in effect even if the identified intended adoptive parents do not end up adopting the child. This issue was before the Vermont Supreme Court in the case *In re P.K.*<sup>2</sup> In *P.K.*, mother filed a motion in the lower court to set aside the TPR order when her child was moved from the home of the then-intended adoptive parent (the paternal grandmother) and placed in another pre-adoptive home. The motion was denied and mother appealed. The Supreme Court upheld the lower court stating that mother, by signing the PACA, “confirmed her understanding that the termination of her parental rights could not be undone even if the anticipated adoption did not occur.”<sup>3</sup>

The Agreement form contains the actual plan for post-adoption contact. Contact can include written contact, phone contact, and/or in person visits. Any contact that is agreed to must be specifically defined. Attorneys for

<sup>1</sup> See 33 V.S.A. § 5124

<sup>2</sup> *In re P.K.* 2017 VT 3

<sup>3</sup> *Id.* at ¶ 13.

parents, intended adoptive parents, and children should all keep in mind that the agreement will continue until the child turns 18 (unless the adoption dissolves or the PACA is modified or terminated by the probate court) and will continue if either the parents or the intended adoptive parents move.

DCF Policy 196 strongly encourages parents to enter into separate PACAs if they desire post-adoption contact, given the potential for an individual parent's circumstances to change over time. There will also be cases where one parent voluntarily relinquishes his or her rights and signs a PACA, while the other parent decides to contest the termination of parental rights. In these situations, the PACA will not go into effect until the adoption is finalized; however, the parties may agree in good faith to follow the PACA while the adoption is pending. Attorneys for the parties should make sure their clients understand that these good faith arrangements are not enforceable in court until the adoption is finalized.

### **PACA APPROVAL PROCESS**

Before a PACA can be issued as a court order, several parties and other individuals must approve the agreement: the parent or parents; the intended adoptive parents; DCF; the child's guardian ad litem (GAL); the child's attorney, and the child, if the child is age 14 or older. The court must then find that the PACA is in the child's best interests. There are 11 best interest factors the court may consider including:

- The age of the child and desires of the child, the child's parents and the child's intended adoptive parents;
- The amount of time the child has been under the actual care, custody and control of someone other than the parent;
- Relationship between the child, child's parents, the intended adoptive parents, the child's siblings and any other person with a significant relationship to the child;
- The willingness of the parents to respect the bond between the child and the child's intended adoptive parents; and the willingness of the intended adoptive parents to respect the bond between the child and the parents.<sup>4</sup>

The court may also consider the recommendations of the guardian ad litem and a therapist or mental health provider who works directly with the child. At the TPR status conference, judges should be sure to ask parents' attorneys if they've discussed PACAs with their clients and ensure that neither the parents nor intended adoptive parents have been pressured to enter into a PACA or contact schedule.

Once an adoption is finalized, in any action to enforce or modify the PACA, "the court shall presume that the adoptive parent's judgment concerning the best interests of the child is correct."<sup>5</sup> Prior to finalizing the agreement, the parties' representatives should be careful to ensure their clients understand the impact of this provision on future enforcement/modification proceedings.

### **MODIFICATION AND ENFORCEMENT**

PACAs are enforced and modified in the Probate Division. A parent may bring an action to enforce a PACA if the adoptive parents are not in compliance. Parties must first attempt an alternative dispute resolution process before the Probate Court will consider an enforcement or modification action.<sup>6</sup> Parties may seek the services of a mediator from the Vermont [Superior Court Mediation Program](#). At the enforcement hearing, the parent must prove by a preponderance of the evidence that enforcement is in the child's best interests.<sup>7</sup> Parents whose rights were terminated are not allowed to petition the court to modify the terms of the agreement.

On the other hand, adoptive parents can petition the probate court to modify or even terminate a PACA, and will prevail if the court finds clear and convincing evidence that such modification or termination is in the child's best interests.<sup>8</sup> Courts are only allowed to modify PACAs in ways that would decrease or restrict contact, not expand it. Best interests factors under this statute include the protection of the physical safety of the adopted child or other members of the adoptive family; the emotional well-being of the adopted child; whether enforcement of the PACA undermines the adoptive parent's authority; and whether, due to changed circumstances, continued compliance would be unduly burdensome to one or more of the parties.<sup>9</sup>

---

<sup>4</sup> See 33 V.S.A. §5124(b)

<sup>5</sup> 33 V.S.A. § 5124(c)

<sup>6</sup> 15A V.S.A. §9-101(d)

<sup>7</sup> 15A V.S.A. §9-101(b)

<sup>8</sup> See 15A V.S.A. §9-101(a)

<sup>9</sup> 15A V.S.A. §9-101(f)