



89-R-99033

STATE OF MISSISSIPPI
Governor Tate Reeves
MISSISSIPPI DEPARTMENT OF CHILD PROTECTION SERVICES
Commissioner Andrea A. Sanders

October 23, 2023

Clerk of the Appellate Courts
Supreme Court of Mississippi
450 High Street
Jackson, MS 39201

FILED

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

BY HAND DELIVERY

To the Supreme Court of Mississippi:

Along with the proposed amendments previously presented, MDCPS requests that these other amendments be considered. These suggested amendments follow from issues encountered in the last year by MDCPS.

Amend Rule 5(a)(3): strike "subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code" and replace with "kept confidential as required under the Mississippi Youth Court Law."

Amend Rule 5(a)(5)(ii): change the heading of the proposed amendment to read "Persons who may be excluded from observing court proceedings." Strike "Disqualifications" and strike "A person is ineligible from being a court observer under this rule if that person is:" Add "The court may exclude from observing the court proceedings any person:" Strike the second and third proposed bullet points regarding relatives and dating. Add an additional bullet point: "or whose presence in observing the court proceedings is determined by the youth court proceedings is determined by the youth court judge to be harmful to the best interests of the child or contrary to the construction and policy of the Mississippi Youth Court Law under section 43-21-103 of the Mississippi Code."

Amend Rule 5(b)(3): strike "subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code." Add "kept confidential as required under the Mississippi Youth Court Law."

Amend Rule 5(b)(5)(A)(ii): strike "Disqualifications" from the proposed amendment. Add "Persons who may be excluded from observing court proceedings. The court may exclude from observing the court proceedings any person:" Strike "A person is ineligible from being a court observer under this rule if that person is:" Delete the second and third proposed bullet points regarding relatives and dating. Add an additional bullet point: "or whose presence in observing the court proceedings is determined by the youth court proceedings is determined by the youth court judge to be harmful to the best interests of



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the child or contrary to the construction and policy of the Mississippi Youth Court Law under section 43-21-103 of the Mississippi Code.”

Amend Rule 6: strike from the title the words: “FOR USE IN COURT PROCEEDINGS OTHER THAN YOUTH COURT PROCEEDINGS” Strike from the proposed amendment to Rule 6(a)(3) “Unless the requesting court is a chancery court, the youth court may not order the transfer of records of a forensic interview conducted by a child advocacy center in abuse and neglect investigations except after conducting a hearing pursuant to Rule 6(b) of these rules.” Add to the proposed notes to Rule 6(a)(3), after the words youth court in the fourth line “and may only be disclosed pursuant to these rules.” Strike “Any party, or a guardian ad litem for a child, seeking the disclosure of records of a forensic interview for use in court proceedings other than youth court proceedings must make an application for their disclosure pursuant to Rule 6 of these rules. In the last sentence of the comment make rule plural.

Rule 7: add to the notes, above Indian tribe jurisdiction over Indian child custody proceedings “Until a child is excluded as eligible for tribal membership, the youth court should apply the ‘active efforts’ standard and ‘clear and convincing’ burden required by ICWA to ensure that the youth court proceedings continue uninterrupted if it is later determined that the child is eligible for tribal membership.”

Rule 11: add to Rule 11(a)(1), after the words “When a” the words “temporary custody order or”. Add the same to Rule 11(b)(1). Also add to Rule 11(b)(1) “temporary custody order or” before the words custody order in line seven. Strike (b)(2)(iv) and renumber remainder. In the notes to Rule 11, add above the paragraph beginning “A parent, guardian, or custodian” the following: “Rule 11(b)(2)”. Also to the notes, above the proposed amendment beginning “U.R.Y.C.P.7”, add “Rule 11(b)(3).” In the second paragraph under the heading “**Federal Requirements,**” the third line after the word child, add the words “in the first written order of custody” and in the fourth line after the word payment add the words “during shelter and subsequent hearings”. Add to the notes, at the end of the discussion of bypassing reasonable efforts, “However, in the case of an Indian child, ‘active efforts’ “may not be bypassed under ICWA.”

Amend Rule 13(f) to add: “Any party may raise the issue of a conflict with the child’s preferences and the guardian ad litem’s recommendation. Any party may move for a separate attorney for a child at any stage of the child welfare proceedings.”

Add Rule 13(h): “A guardian ad litem is not a party.”

Add Rule 13(i): “Any party may exclude the guardian ad litem from a meeting between parties.”



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Rule 15: Add to the end of the heading, after the word PROCEDURES, "IN YOUTH COURT CASES".

Add Rule 15(f): "Once a court proceeding has started, there will be no ex parte discussions."

Add to the proposed amendment to Rule 16(a)(5): "If the youth court prosecutor declines to initiate formal proceedings, the child welfare agency may consider initiating formal proceedings."

Add Rule 22.1: "Service of process upon the child welfare agency will be accomplished through MYCIDS whenever service of process upon a party is required by these rules."

Add to Rule 24(b)(3)(iv) "that will be made available within ten (10) days to any party upon request."

Rule 24(b)(4), final paragraph, sentence regarding counsel for indigent children, strike the word "should" and replace with the word "shall". Strike the words "whenever the appointed guardian ad litem for the child is not an attorney" and replace with "when required pursuant to Section 43-21-201 of the Mississippi Code or these rules".

Rule 29(a)(1) after the words "child's home are not required" add the words "under section 43-21-603 of the Mississippi Code." Strike from Rule 29(a)(3) the words "on or after July 1, 1998" in both the heading and the text. Add to Rule 29(c)(iv) the words "or durable legal guardianship".

Rule 37: Strike the word "DECREES" from the heading and the first sentence of text. Add a second sentence "In child protection proceedings, final orders shall include the order of adjudication upon entry of a disposition order; a permanency order; and permanency review orders. When appealing a final order, the party bringing the appeal may raise any legal issues or challenge any factual findings applicable to any stage of the proceedings in the case."

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Vicki Lowery".

Vicki Lowery, General Counsel