

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 7th day of November 2007, the following order was made and entered:

In Re: Rules of Procedure for Child Abuse and Neglect Proceedings, Rules of Practice and Procedure for Domestic Violence Proceedings and Rules of Practice and Procedure for Family Courts.

On the 27th day of June 2007 came the Court pursuant to the recommendations of the Court Improvement Program Oversight Board in its 2006 Year-End Report regarding the overlap of child abuse and neglect issues in family court and circuit court, and proceeded to consider proposed amendments and additions to the Rules of Procedure for Child Abuse and Neglect Proceedings, Rules of Practice and Procedure for Domestic Violence Proceedings and Rules of Practice and Procedure for Family Courts and provisionally approved the proposed amendments and additions to said rules with a period of public comment on the proposed amendments and additions to conclude on August 31, 2007. No comments were filed.

On this day came the Court on its own motion and proceeded to consider the proposed amendments and additions. Upon consideration whereof, the Court is of the opinion to and does hereby adopt the following amendments and additions to the following Rules. Deletions are indicated by strikethroughs and insertions are indicated by underscoring, to read as follows:

“Rules of Procedure for Child Abuse and Neglect Proceedings

Rule 3a. Pre-Petition Investigations

(a) Administrative Order Regarding Investigation. Upon receiving a written referral from a family court pursuant to Rule 47~~8~~ of the Rules of Practice and Procedure for Family Courts, a circuit court shall forthwith cause to be entered and served an administrative order in the name of and regarding the affected child or children directing

the Department to submit to the court an investigation report or appear before the court in not more than 45 days, at a scheduled hearing, to show cause why the Department's investigation report has not been submitted to the circuit court and referring family court. If a circuit court, based upon a review of the written referral from family court, determines that the allegations or other information present reason to believe a child may be in imminent danger, the circuit court may shorten the time for the Department to act upon the referral and appear before the circuit court. The scheduled hearing may be mooted by the Department's earlier submission of the investigation report or, in the alternative, the filing of an abuse and neglect petition under Chapter 49 of the West Virginia Code relating to the matters which were the subject of the family court referral and circuit court administrative order. The duties of the Department under this rule shall be in addition to the Department's obligations pursuant to W. Va. Code §§ 49-6A-2a regarding notification of disposition to persons mandated to report suspected child abuse and neglect.

(b) Mandamus Relief. Following review of an investigation report in which the Department concludes that a civil petition is unnecessary, if the circuit court believes that the information in the family court's written referral and the Department's investigation report, considered together, suggest circumstances upon which the Department would have a duty to file a civil petition, the court shall treat the written referral as a petition for a writ of mandamus in the name of and regarding the affected child or children. A show-cause order shall issue by the court setting a prompt hearing to determine whether the respondent Department has a duty to file a civil petition under the particular circumstances set forth in the written referral and investigation report. If it is determined by the court that the Department has a nondiscretionary duty pursuant to W. Va. Code §§ 49-6-5b to file a petition seeking to terminate parental rights, the Department shall be directed by writ to file such petition within a time period set by the court. If it is determined that the circumstances bring the filing decision within the Department's discretionary authority, no such writ shall issue unless the court specifically finds aggravated circumstances, consistent with the meaning and usage of that term in W. Va. Code §§ 49-6-3(d)(1), and that the Department acted arbitrarily and capriciously in the exercise of its discretion.

(c) Service and Notice. Orders and other documents issued pursuant to this rule shall be served on the Department by mail or facsimile transmission directed to the Department's local child protective services office. Copies of such orders shall also be delivered to the prosecuting attorney.

(d) Confidentiality. All orders and other documents pertaining to matters arising under this rule, and docket entries regarding the same, shall be treated as confidential records concerning a child consistent with W. Va. Code §§ 49-7-1; and any hearings conducted pursuant to this rule may be attended by those persons provided notice under subsection (c) above, but shall be closed to the general public except that persons whom the circuit court determines have a legitimate interest in the proceedings may attend. If the case in family court that gave rise to the referral to the Department was a domestic violence

proceeding, staff from any involved licensed family protection program is entitled access to circuit court proceedings under this rule to the same extent such access is afforded under statutes and rules pertaining to domestic violence proceedings.

(e) Transfer of Administrative Proceedings. Within 10 days following service of an administrative order issued by a circuit court pursuant to subdivision (a), the Department may file a motion with the issuing court seeking transfer of the administrative proceedings to the circuit court of another county based upon reasons relating to a more appropriate venue for the administrative proceedings and any abuse and neglect case which may result from such proceedings. Unless the court finds the basis for the motion to be clearly unreasonable under the particular circumstances presented, the administrative proceedings shall be transferred as requested. If the administrative proceedings are transferred, the Department's obligations pursuant to W. Va. Code § 49-6A-2a and Rule 48(c) of the Rules of Practice and Procedure for Family Court regarding the investigation and providing a copy of any investigative report remain applicable to the referring family court. The circuit clerk shall send certified copies of the order granting or denying the transfer motion to the referring family court and the prosecuting attorney. If the order grants the motion, certified copies shall also be sent to the circuit court and prosecuting attorney in the county where the administrative proceeding is transferred.

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Rule 6a. Confidentiality of Proceedings and Records; Access by Family Court.

(a) Hearings and Reviews. Attendance at all proceedings brought pursuant to W. Va. Code § 49-6-1, *et seq.* shall be limited to the parties, counsel, persons entitled to notice and the right to be heard, witnesses while testifying, multidisciplinary treatment team members, and other persons whom the circuit court determines have a legitimate interest in the proceedings.

(b) Court Records. All records and information maintained by the courts in child abuse and neglect proceedings shall be kept confidential except as otherwise provided in W. Va. Code, Chapter 49 and this rule. In the interest of assuring that any determination made in proceedings before a family court arising under W. Va. Code, Chapter 48, or W. Va. Code § 44-10-3, does not contravene any determination made by a circuit court in a related prior or pending child abuse and neglect case arising under W. Va. Code, Chapter 49, family courts and staff shall have access to all circuit court orders and case indexes in this State in all such related Chapter 49 proceedings.

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Rules of Practice and Procedure for Domestic Violence Civil Proceedings

Rule 25a. Child Protection Investigations

(a) Administrative Order Regarding Investigation. Upon receiving a written referral of possible child abuse and neglect from a family court pursuant to Rule 478(b) of the Rules of Practice and Procedure for Family Courts, a circuit court shall forthwith cause to be entered and served an administrative order in the name of and regarding the affected child or children directing the Department of Health and Human Resources to submit to the court an investigation report or appear before the court in not more than 45 days, at a scheduled hearing, to show cause why the Department's investigation report has not been submitted to the circuit court and referring family court. If a circuit court, based upon a review of the written referral from family court, determines that the allegations or other information present reason to believe a child may be in imminent danger, the circuit court may shorten the time for the Department to act upon the referral and appear before the circuit court. The scheduled hearing may be mooted by the Department's earlier submission of the investigation report or, in the alternative, the filing of an abuse and neglect petition under Chapter 49 of the West Virginia Code relating to the matters which were the subject of the family court referral and circuit court administrative order. The duties of the Department under this rule shall be in addition to the Department's obligations pursuant to W. Va. Code §§ 49-6A-2a regarding notification of disposition to persons mandated to report suspected child abuse and neglect.

(b) Mandamus Relief. Following review of an investigation report in which the Department concludes that a child abuse and neglect petition is unnecessary, if the circuit court believes that the information in the family court's written referral and the Department's investigation report, considered together, suggest circumstances upon which the Department would have a duty to file a such a petition, the court shall treat the written referral as a petition for a writ of mandamus in the name of and regarding the affected child or children. A show-cause order shall issue by the court setting a prompt hearing to determine whether the respondent Department has a duty to file a child abuse and neglect petition under the particular circumstances set forth in the written referral and investigation report. If it is determined by the court that the Department has a nondiscretionary duty pursuant to W. Va. Code §§ 49-6-5b to file a petition seeking to terminate parental rights, the Department shall be directed by writ to file a child abuse and neglect petition within a time period set by the court. If it is determined that the circumstances bring the filing decision within the Department's discretionary authority, no such writ shall issue unless the court specifically finds aggravated circumstances, consistent with the meaning and usage of that term in W. Va. Code §§ 49-6-3(d)(1), and that the Department acted arbitrarily and capriciously in the exercise of its discretion.

(c) Service and Notice. Orders issued pursuant to this rule shall be served on the Department by mail or facsimile transmission directed to the Department's local child protective services office. Copies of such orders shall also be delivered to the prosecuting attorney.

(d) Confidentiality. All orders and other documents pertaining to matters arising under this rule, and docket entries regarding the same, shall be treated as confidential records concerning a child consistent with W. Va. Code §§ 49-7-1; and any hearings conducted pursuant to this rule may be attended by those persons provided notice under subsection (c) above, but shall be closed to the general public except that persons whom the circuit court determines have a legitimate interest in the proceedings may attend. If the case in family court that gave rise to the referral to the department was a domestic violence proceeding, staff from any involved licensed family protection program is entitled access to circuit court proceedings under this rule to the same extent such access is afforded under statutes and rules pertaining to domestic violence proceedings.

(e) Abuse and Neglect Co-Petitions for Child Protection. The petitioner for the protective order may appear as a co-petitioner on the child abuse and neglect petition filed by the Department pursuant to W. Va. Code §§ 49-6-1, et seq., if both so agree. Nothing herein shall be construed as either a requirement that the petitioner for the protective order be a co-petitioner under W. Va. Code §§ 49-6-1, et seq., or a prohibition against the filing of a petition pursuant to W. Va. Code §§ 49-6-1, et seq. by the petitioner for the protective order should the Department show cause why it will not file such a petition.

(f) Transfer of Administrative Proceedings. Within 10 days following service of an administrative order issued by a circuit court pursuant to subdivision (a), the Department may file a motion with the issuing court seeking transfer of the administrative proceedings to the circuit court of another county based upon reasons relating to a more appropriate venue for the administrative proceedings and any abuse and neglect case which may result from such proceedings. Unless the court finds the basis for the motion to be clearly unreasonable under the particular circumstances presented, the administrative proceedings shall be transferred as requested. If the administrative proceedings are transferred, the Department's obligations pursuant to W. Va. Code § 49-6A-2a and Rule 48(c) of the Rules of Practice and Procedure for Family Court regarding the investigation and providing a copy of any investigative report remain applicable to the referring family court. The circuit clerk shall send certified copies of the order granting or denying the transfer motion to the referring family court and the prosecuting attorney. If the order grants the motion, certified copies shall also be sent to the circuit court and prosecuting attorney in the county where the administrative proceeding is transferred.

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Rules of Practice and Procedure for Family Court

Rule 478. Child Abuse and Neglect

(a) Reports by Family Court. If a family court has reasonable cause to suspect any minor child involved in family court proceedings has been abused or neglected, that family court

shall immediately report the suspected abuse or neglect to the state child protective services agency, pursuant to W. Va. Code §§ 49-6A-2, and the circuit court.

(b) Written Referrals. In addition to any oral communication made by the family court to the state child protective services agency pursuant to subdivision (a), the family court shall forthwith prepare and submit a written referral to the agency office in the county where the family court proceeding is pending and, at the same time, transmit copies of the referral to the appropriate circuit court in that county, as determined by the chief judge, and to the prosecuting attorney. Such written referral shall set forth the specific allegations or information that led to the family court's determination of reasonable cause to suspect that a child or children involved in family court proceedings has been abused or neglected.

(c) Reports of Investigations of Child Abuse and Neglect. The state child protective services agency shall promptly provide the family court, and the circuit court, and the prosecuting attorney copies of any report of any investigation regarding the abuse and neglect of any minor child involved in family court proceedings, including those investigations conducted pursuant to subsection (b) above and Rule 3a of the Rules of Procedure for Child Abuse and Neglect Proceedings.

(d) Jurisdiction of Proceedings. The family court shall retain full jurisdiction of proceedings until an abuse or neglect petition is filed. If an abuse or neglect petition is filed and the family court has entered an order regarding the allocation of custodial and decision-making responsibility between the parents, orders of the circuit court shall supercede and take precedence over any order of the family court regarding the allocation of custodial and decision-making responsibility between the parents. If the family court has not entered an order for the allocation of custodial and decision-making responsibility between the parents, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility between the parents and defer to the orders of the circuit court.

(e) Material Change of Circumstances Reports. While the Department of Health and Human Resources is under no duty to monitor cases for family courts, the Department shall advise the family court of any material change of circumstances involving the child or services to the child's family in any pending family court case in which the Department is involved but has not filed a petition pursuant to W. Va. Code §§ 49-6-1, et seq. The family court shall notify the Department of the closure or pendency of any such cases.

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Rule 478a. Infant Guardianship Proceedings.

(a) Removal by family court to circuit court of infant guardianship cases involving child abuse and neglect. If a family court learns that the basis, in whole or part, of a petition

for infant guardianship brought pursuant to W. Va. Code §§ 44-10-3, is an allegation of child abuse and neglect as defined in W. Va. Code §§ 49-1-3, then the family court before whom the guardianship proceeding is pending shall remove the case to the circuit court for hearing. Should the family court learn of such allegations of child abuse and neglect during the hearing, then the family court shall continue the hearing, subject to an appropriate temporary guardianship order, and remove the case to the circuit court for hearing to be conducted within 10 days, for determination of all issues. Once removed, the case (or any portion) shall not be remanded to family court. At the circuit court hearing, allegations of child abuse and neglect must be proven by clear and convincing evidence. Immediately upon removal, the circuit clerk shall forthwith send the removal notice to the circuit court. Upon receipt of the removal notice, the circuit court shall forthwith cause notice to be served in accordance with W. Va. Code §§ 44-10-3 and to the Department of Health and Human Resources who shall be served with notice of the petition, including a copy of the petition, and of the final hearing to be conducted before the circuit court. Such notice to the Department of Health and Human Resources shall constitute a report by the family and circuit courts pursuant to W. Va. Code §§ 49-6A-2.

(b) Investigation of Abuse and Neglect. Upon removal of the infant guardianship petition, the circuit court may utilize the investigative and mandamus process and related procedures set forth in Rule 3a of the Rules of Procedure for Child Abuse and Neglect Proceedings if the court deems it necessary or appropriate under the circumstances presented. The circuit court shall allow the petitioner for infant guardianship to appear as a co-petitioner on the petition filed by the Department of Health and Human Services pursuant to W. Va. Code §§ 49-6-1, et seq., if both so agree. Nothing herein shall be construed as either a requirement that the petitioner for infant guardianship be a co-petitioner under W. Va. Code §§ 49-6-1, et seq., or a prohibition against the filing of a W. Va. Code §§ 49-6-1, et seq., petition by the petitioner for infant guardianship should the Department show cause why it will not file such a petition.”

A True Copy

Attest: _____
Deputy Clerk, Supreme Court of Appeals