

## **OBTAINING RECORDS FROM THE YOUTH COURT AND THE DEPARTMENT OF HUMAN SERVICES**

When a chancery court proceeding in which the Guardian ad Litem has been appointed involves a child who has been the subject of proceedings in the Youth Court, or the subject of an investigation by the Department of Human Services in which there was no formal Youth Court Action (i.e., an investigation that yielded no evidence of abuse or neglect), the Guardian ad Litem should obtain copies of those records if possible.

Rule 6 of the Uniform Youth Court Rules provides the procedure for doing this:

### **RULE 6 SUBPOENA DUCES TECUM**

(a) Procedures for issuing a subpoena duces tecum. **No subpoena duces tecum for records involving children**, as such records are defined under section 43-21-105 of the Mississippi Code, **shall issue from any court other than youth court except upon compliance with the following procedures:**

- (1) the party shall make an application to the court specifying which records are sought;
- (2) **the court shall issue a subpoena duces tecum to the youth court** for these records;
- (3) the youth court, unless a hearing is conducted pursuant to Rule 6(b) of these rules, **shall transfer copies of the records to the court;**
- (4) **the court shall conduct an in camera inspection of the records**, in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to determine which records should be disclosed to the party;
- (5) the court shall, at all times, protect the confidentiality of the records to the extent required of the youth court under Mississippi's Youth Court Law.

(b) Hearing on access to confidential files. **The youth court may require a hearing to determine whether the court or parties have a legitimate interest to be allowed access to the confidential files.** In determining whether a person has a legitimate interest, the youth court shall consider the nature of the proceedings, the welfare and safety of the public, and the interest of the child.

### **Comments & Procedures - - Rule 6.**

The child's right of confidentiality of youth records is a **qualified privilege, not an absolute one**. See *Daniels v. Wal-Mart Stores, Inc.*, 634 So. 2d 88, 93 (Miss. 1993). Mississippi has adopted the procedures advanced in *Ritchie* when there is a request originating in trial court proceedings for disclosure of confidential youth court records. See *In re J.E.*, 726 So. 2d 547, 553 (Miss. 1998). **These procedures require the trial judge to: (1) conduct an in camera review of the requested records and (2) release any information contained therein material to the fairness of the trial.** Such is an ongoing duty. See *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987).

In following the procedures outlined in Youth Court Rule 6, the following steps are suggested:

1. Draft and File the **Petition for Writ of Assistance** with the Chancery Court where the case is pending, and serve copies on all counsel (or parties if pro se). Include with the Petition as Exhibits Copies of the subpoenas duces tecum that you want the Chancellor to issue to the Youth Court and to DHS.
2. Prepare the **proposed Order** granting the Writ of Assistance and deliver a copy of the Petition and proposed Order to the Chancellor.
3. If the request is granted, the Chancellor will sign the Order. The GAL should make arrangements to pick up the Order and see that it is filed with the Chancery Clerk.
4. After the Order is filed, have the Chancery Clerk issue the subpoenas that the GAL prepared for the Youth Court and DHS records. The custodian of the Youth Court records is the Chancery Clerk, so one option is to “serve” the Youth Court Subpoena on the Chancery Clerk. The Clerk usually will not know what to do with this at first, so the GAL may need to facilitate this with the Youth Court Judge. The GAL can also serve the DHS subpoena on an appropriate DHS representative.
5. The Subpoenas are issued in the name of the Chancellor, so any documents produced will be delivered by DHS or the Youth Court to the Chancellor’s office. Therefore, the GAL has to check with the judge’s court administrator or law clerk periodically, to see if the documents have been produced, if the *in camera* review has been completed, and if the Chancellor has made a decision about releasing the information that was produced in response to the subpoenas. Some judges allow the GAL to review the DHS file, but not to make copies, so there is no risk of copies being disseminated.
6. The GAL may also need to present an Order to the Youth Court Judge for approval of the release of the records. However, this will vary with the preference of each Youth Court Judge.
7. Rule 6 also provides that the Youth Court may conduct a hearing on whether the records concerning the child should be released. However, the Rule does not specify a procedure for dealing with potential inconsistent rulings about the release of the records between the Youth Court and the Chancery Court.