

**SUMMARY OF THE MISSISSIPPI UNIFORM YOUTH COURT RULES
(adopted December 11, 2008, as amended March 23, 2010)**

Initially, it should be noted that there are **three distinct stages** in Youth Court proceedings concerning children who are the victims of abuse or neglect.

- A. Shelter hearing
- B. Adjudicatory Hearing
- C. Dispositional Hearing

The Youth Court Rules and related statutes provide that hearsay and opinion testimony may be considered in a Shelter hearing and in a Dispositional Hearing. However, the Rules and statutes provide that only evidence that would be admissible in a civil proceeding is admissible in an Adjudicatory Hearing.

The Youth Court Rules do not address or reconcile Rule 1101(b), Miss. R. Evid., which provides that the Rules of Evidence do not apply in Youth Court proceedings. See, e.g., In Interest of T.L.C., 566 So.2d 691, 770 (Miss.1990) (“By express provision, the Mississippi Rules of Evidence are not in force.”)

The following are excerpts from the Youth Court rules and related statutes and citations that appear to apply to abuse and neglect cases.

RULE 2(A)(2) - - PROCEEDINGS SUBJECT TO THESE RULES

“(2) any Chancery Court proceeding when hearing pursuant to Miss. Code Ann. § 93-11-65(4) an allegation of abuse or neglect of the child that first arises in the course of the custody or maintenance action.”

Official comment: “Chancery Court may hear allegation of abuse or neglect ... **All proceedings on the abuse or neglect charge shall be conducted in accordance with these rules.**”

See Miss. Code Ann. § 43-21-151(1)(c): “When a charge of abuse of a child **first arises in the course of a custody action** between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, **the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents,** notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

RULE 4 - - DEFINITIONS

Comments: “**Court means any ... Chancery Court when hearing, pursuant to Miss. Code Ann. § 93-11-65 of the Mississippi Code, a charge of abuse or neglect of a child that first arises in the course of a custody or maintenance action; ...**

RULE 7 - - COMPLIANCE WITH FEDERAL LAWS

(a) Federal laws requiring compliance. These rules require compliance with federal laws which impact funding for cases within the jurisdiction of the youth court.

RULE 8 - - INTAKE PROCESS

(b) Child protection proceedings - - for abused or neglected children

(c) Chancery Court proceedings - - When a chancery court orders DHS to investigate a charge of abuse and neglect that first arises in the course of a custody or maintenance action, DHS conducts an intake screening and makes recommendations to the court, which shall then, without a hearing, order the appropriate action to be taken or transfer the case and recommendation to youth court.

Comments: “To assure consistent with rule that the Chancery Court procedures for investigating charges of abuse or neglect are consistent with those of applicable to Youth Court.”

See Helmert v. Biffany, 842 So.2d 1287, (Miss. 2003)(“although the youth court was granted exclusive jurisdiction in abuse proceedings, that jurisdiction may be retained by the chancery court if allegations of abuse are brought during the pendency of a custody hearing. See Miss. Code Ann. §§ 43-21-151(c) (Supp.1999)”).

RULE 13 - - APPOINTMENT OF GUARDIAN AD LITEM

(b) Qualifications - - requires six hours of annual training approved by the Mississippi judicial college

(c) Duties - - MCA 43-21-121(c) “In addition to all other duties required by law, a guardian ad litem shall have the duty to protect the interest of a child for whom he has been appointed guardian ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. The guardian ad litem is not an adversary party and the court shall insure

that guardians ad litem perform their duties properly and in the best interest of their wards. The guardian ad litem shall be a competent person who has no adverse interest to the minor. The court shall insure that the guardian ad litem is adequately instructed on the proper performance of his duties.”

(d) **Fees** - - guardians shall be paid a reasonable fee **OUT OF THE COUNTY’S GENERAL FUND** for the performance of their duties - - MCA 43-21-121(6). The court may order the parents to pay all or a portion of the Guardian ad litem’s fees, if they are financially able

(f) appointment of “child’s attorney” - - if the conflict arises between the wishes of the child and the recommendations of the guardian ad litem, **the court shall appoint a second attorney to represent the child’s wishes.**

RULE 16 - - SHELTER HEARINGS

(b) Child protection proceedings - - **the court may consider HEARSAY and opinion evidence**

RULE 24 - - ADJUDICATION HEARINGS

(b) **child protection** - - hearing must be conducted within 90 days (See Miss. Code Ann. § 43-21-551- - hearing to determine whether there is “legally sufficient evidence to find that the child is ... a neglected child or an abused child.”)

(b)(5)(ii) **evidence** - - court may consider any evidence that would be admissible in a civil proceeding. This would appear to exclude hearsay testimony. See *In the Interest of C.B.*, 574 So.2d 1369, 1371-72 (Miss. 1990). In *C.B.*, the Court invalidated a statute that provided a procedure for admitting hearsay by a child concerning sexual abuse. The Court then reversed and remanded the case because the evidence of sexual abuse by the father consisted entirely of hearsay testimony concerning statements allegedly made by the child, and the Youth Court Judge failed to determine whether such testimony fell within any of the hearsay exceptions enumerated in Miss.R.Evid. 803.

However, Rule 1101(b)(3) of the Mississippi Rules of Evidence provides that, except for the rules pertaining to privileges, the Rules do not apply to youth court cases. However, regarding evidence which is admissible in a youth court adjudicatory hearing, Miss. Code Ann. § 43-21-559(1) provides: “(1) In arriving at its adjudicatory decision, the youth court shall consider only evidence which has been formally admitted at the adjudicatory hearing. ... **In proceedings to determine whether a child is a neglected child or an abused child, the youth court shall admit any evidence that would be admissible in a civil proceeding.**”

Unlike detention or shelter hearings, evidence introduced at the adjudicatory hearing must conform to the rules of evidence. Miss. Code Ann. § 43-21-559(1) (“In proceedings to determine whether a child is a delinquent child or a child in need of supervision, the youth court shall admit any evidence that would be admissible in a criminal proceeding. **In proceedings to determine whether a child is a neglected child or an abused child, the youth court shall admit any evidence that would be admissible in a civil proceeding.**”)

RULE 26(c) - - DISPOSITION HEARINGS

(c)(ii) evidence - - the court may consider hearsay and opinion evidence

With respect to evidence which is admissible at a disposition hearing, Miss. Code Ann. § 43-21-603(2) (West 2011), allows the court to consider any evidence which is material and relevant to the disposition of the cause, **including hearsay and opinion evidence.**

See *In the Interest of T.L.C.*, 566 So.2d 691, 700 (Miss. 1990) (“Traditionally rules of evidence have been relaxed in youth court proceedings. By express provision, the Mississippi Rules of Evidence are not in force. Rule 1101(b)(3), Miss.R.Ev. Our law requires only that youth court rules of evidence ‘comply with applicable constitutional standards,’ Miss. Code Ann. § 43-21-203(4) (1972), none of which are implicated here.”)

In the case, *In Interest of C.B.*, 574 So.2d 1369, 1372 n. 1 (Miss. 1990) the Court explained that the rules of evidence apply in adjudicatory hearings in Youth Court, **but not in dispositional hearings.** However, the Court reversed the finding of sexual abuse by the father, because the only evidence offered of such conduct was the hearsay testimony of the child, and there had been no determination that such hearsay was admissible under the Rules of Evidence.

MISSISSIPPI RULES OF CIVIL PROCEDURE

RULE 81(a)(3) - - the Rules of Civil Procedure do not apply to proceedings conducted pursuant to the Youth Court Law and the Family Court Law

APPLICATION OF THE UNIFORM YOUTH COURT RULES TO CHANCERY COURT PROCEEDINGS

ISSUE: WHETHER GALS MAY OFFER HEARSAY TESTIMONY UNDER THE YOUTH COURT RULES AND STATUTES IN CASES WHERE ALLEGATIONS OF ABUSE AND NEGLECT FIRST ARISE IN THE COURSE OF A CUSTODY PROCEEDING IN CHANCERY COURT?

Stated differently, the question may be posed as follows: Under the Uniform Youth Court Rules, are the Chancery Courts required to either refer allegations of abuse and neglect to the Youth Court, or if the Chancery Court elects to resolve the abuse and neglect issues, must the Chancellor follow the same procedures and rules that govern allegations of abuse or neglect in the Youth Court? Significantly, under the Youth Court rules, hearsay may be considered by the Youth Court in determining the best interest of the minor child.

- A. Initially, it must be noted that **the Mississippi Rules of Evidence expressly provide that they do not apply in Youth Court proceedings.** Rule 1101(b)(3), Miss.R.Evid.
- B. In addition, the Mississippi Supreme Court has clearly held that the **Rules of Evidence do not apply in Youth Court proceedings.** *In Interest of T.L.C.*, 566 So.2d 691, 770 (Miss.1990) (“Traditionally rules of evidence have been relaxed in youth court proceedings. **By express provision, the Mississippi Rules of Evidence are not in force in Youth Court.** Rule 1101(b)(3), Miss.R.Evid. Our law requires only that youth court rules of evidence ‘comply with applicable constitutional standards,’ Miss. Code Ann. § 43-21-203(4) (1972).”)
- C. Regarding the propriety of evidence, the Youth Court Act provides that “[t]he court may consider **any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence.**” Miss.Code Ann. Section 43-21-603(2) (Rev.2004). The Youth Court Act implies that strict adherence to our rules of evidence is not required, and that, “concerns over hearsay evidence and the like are basically dismissed.” *In re R.D.*, 658 So.2d 1378, 1391 (Miss.1995).
- D. Rule 1103, Miss. R. Evid. - - All evidentiary rules, whether provided by statute, court decision or court rule, which are inconsistent with the Mississippi Rules of Evidence are hereby repealed.
- E. *McDonald* was decided based on proceedings that had taken place in the chancery court **before the Mississippi Youth Court Rules were implemented in 2009.**

- F. The Youth Court Rules appear to provide that Chancery Courts are to follow the same rules as the Youth Courts when resolving allegations of abuse and neglect that first arise in the course of Chancery Court proceedings.
- G. The Youth Court Rules appear to govern Guardians ad Litem in resolving claims of abuse and neglect cases that first arise in chancery court custody proceedings