

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

_____ and

PETITIONERS

v.

CAUSE NUMBER: _____

RESPONDENT

**MOTION FOR WRIT OF ASSISTANCE
REQUESTING ISSUANCE OF SUBPOENAS DUCES TECUM
CONCERNING RECORDS INVOLVING MINOR CHILD**

Comes now, the undersigned, duly appointed Guardian ad Litem on behalf of the minor child in the above-styled case, pursuant to Rule 6 of the Uniform Rules of Youth Court Practice, requesting the Court's assistance in the issuance of subpoenas duces tecum concerning records pertaining to the minor child named herein, stating as follows:

1. The undersigned has been appointed as Guardian ad Litem in this case on behalf of the minor child, _____.
2. The undersigned has been advised that there may have been an investigation conducted by the by the _____ County Department of Child Protection Services [hereinafter: "CPS"] concerning the minor child, _____. There may also have been a forensic interview conducted by a Child Advocacy Center, and proceedings in the Youth Court of _____ County concerning the minor child.
3. The minor child is now at the center of a contentious custody dispute in this Court.

4. The procedures for obtaining documents for use in a Chancery Court proceeding concerning investigations and evidence gathered by CPS, and any related proceedings in a Youth Court concerning a minor child are governed by Rule 6 of the Uniform Rules of Youth Court Practice which imposes the certain procedures.

5. Rule 6, URYCP, provides:

(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 [chancery] court specifying which records are sought;
- (2) **the [chancery] 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 [chancery] court;
- (4) the [chancery] 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 [chancery] 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.

Rule 6, Uniform Rules of Youth Court Practice (emphasis added).

6. Under this rule, and the circumstances presented in the case at bar, the undersigned respectfully requests that this Court issue a subpoena duces tecum authorizing _____ Child Protection Services to produce all records concerning the minor child, _____, including any records, recordings or documents related to a forensic interview, and to this Court for *in camera* review, so that this Court may determine whether this information should be released to the Guardian ad Litem and the parties in this case.

6. In addition, the undersigned requests that this Court issue a second subpoena duces tecum to the Clerk of the _____ County Youth Court requiring that any records concerning the minor child be produced to this Court for in camera review, so that this Court may determine whether any such information should be released to the Guardian ad Litem and the parties in this case.

7. Finally, the undersigned respectfully requests such other general relief as may be warranted in the premises.

8. The proposed subpoenas duces tecum are attached to this motion as Exhibits “A” and “B.” The undersigned requests that this Court issue an Order directing the Lafayette County Chancery Clerk to issue these subpoenas, so that the information requested may be provided to this Court for *in camera* inspection.

Respectfully submitted, this the 16th day of January, 2019.

XXXXXXXXXXXXXXXXXXXX, MSB #XXXXXX
Guardian ad Litem for the minor child,
XXXXXXXXXXXXXXXXXXXX
P.O. Box XXXX
XXXXXXXXXX, MS XXXXXX
Phone: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx
e-mail: XXXXXXXXXXXXXXX

CERTIFICATE OF SERVICE

I hereby certify that I have this day served via hand delivery and electronic service as provided under Rule 5 of the Mississippi Rules of Civil Procedure, a true and correct copy of the foregoing document to the following:

Attorney for Plaintiff:
XXXXXXXXXXXX

Attorney for Defendant:

XXXXXXXXXXXXXXXXXX

This the _____ day of _____, 20_____.

XXXXXXXXXXXXXXXXXXXX, MSB #XXXXXX

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

PETITIONER

VS.

CAUSE NO. _____

RESPONDENT

SUBPOENA DUCES TECUM

THE STATE OF MISSISSIPPI

TO: _____
_____ County DCPS
Attn: Records Custodian
_____ Street
_____, MS _____

phone _____

Pursuant to Rule 45 of the Mississippi Rules of Civil Procedure, YOU ARE REQUIRED to produce true and correct, certified copies of any and all records in your possession concerning the following individuals:

(1) _____, date of birth ___/___/___; social Security Number xxx-xx-1234.

You may comply with this Subpoena Duces Tecum by delivering such records to Chancellor _____ within ten days after receipt of this subpoena duces tecum.

FAIL NOT TO COMPLY UNDER PENALTY OF LAW.

Issued under my hand and the seal of said Court, this the _____ day of _____, 20__.

_____, CHANCERY CLERK
_____ County, Mississippi

[seal]

BY: _____
DEPUTY CLERK

RECEIVED THIS _____ DAY OF _____, 2014.

BY: _____, Sheriff of _____ County, Mississippi

_____, Deputy Sheriff

SHERIFF'S RETURN - - PROOF OF SERVICE

State of Mississippi

County of _____

I personally delivered copies of the summons and complaint on the _____ day of _____, 20____, to: _____.

After exercising reasonable diligence I was unable to deliver copies of the subpoena to _____ within _____ County, Mississippi. I served the summons and complaint on the _____ day of _____, 20____, at the usual place of abode of said _____, by leaving a true copy of the summons and complaint with _____, who is the _____ (here insert wife, husband, son, daughter or other person, as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the summons and complaint, and thereafter on the _____ day of _____, 20____, and I also mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place of abode where the copies were left.

I was unable to serve the summons and complaint.

This the _____ day of _____, 20____.

_____, Sheriff
_____ County, Mississippi

By: _____, Deputy Sheriff

SUBPOENA REQUESTED BY: David L. Calder, Guardian ad Litem
DAVID L. CALDER, MSB# 7686
University of Mississippi School of Law, Civil Legal Clinic
P.O. BOX 1790
Oxford, MS 38655
Phone: (662)238-7770
Fax: (662)238-2883

PROOF OF SERVICE

I, _____, process server, hereby certify that I have this day served via: _____ the foregoing Subpoena Duces Tecum by delivering a true and correct copy thereof on _____ at the office of _____, on this the _____ day of _____, 20____.

Process Server

Address: _____

Sworn to before me this the _____ day of _____, 20____.

[seal]

NOTARY

My commission expires:

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

PETITIONER

VS.

CAUSE NO. _____

RESPONDENT

SUBPOENA DUCES TECUM

THE STATE OF MISSISSIPPI

TO: _____
Clerk of the _____ County Youth Court
_____ Street
_____, MS _____ phone _____

Pursuant to Rule 45 of the Mississippi Rules of Civil Procedure, YOU ARE REQUIRED to produce true and correct, certified copies of any and all records in your possession concerning the following individuals:

(1) _____, date of birth ___/___/___; social Security Number xxx-xx-1234.

You may comply with this Subpoena Duces Tecum by delivering such records to Chancellor _____ within ten days after receipt of this subpoena duces tecum.

FAIL NOT TO COMPLY UNDER PENALTY OF LAW.

Issued under my hand and the seal of said Court, this the _____ day of _____, 20____.

_____, CHANCERY CLERK
_____ County, Mississippi

[seal]

BY: _____
DEPUTY CLERK

RECEIVED THIS _____ DAY OF _____, 2014.

BY: _____, Sheriff of _____ County, Mississippi

_____, Deputy Sheriff

SHERIFF'S RETURN - - PROOF OF SERVICE

State of Mississippi

County of _____

I personally delivered copies of the summons and complaint on the _____ day of _____, 20____, to: _____.

After exercising reasonable diligence I was unable to deliver copies of the subpoena to _____ within _____ County, Mississippi. I served the summons and complaint on the _____ day of _____, 20____, at the usual place of abode of said _____, by leaving a true copy of the summons and complaint with _____, who is the _____ (here insert wife, husband, son, daughter or other person, as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the summons and complaint, and thereafter on the _____ day of _____, 20____, and I also mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place of abode where the copies were left.

I was unable to serve the summons and complaint.

This the _____ day of _____, 20____.

_____, Sheriff
_____ County, Mississippi

By: _____, Deputy Sheriff

SUBPOENA REQUESTED BY: David L. Calder, Guardian ad Litem
DAVID L. CALDER, MSB# 7686
University of Mississippi School of Law, Civil Legal Clinic
P.O. BOX 1790
Oxford, MS 38655
Phone: (662)238-7770
Fax: (662)238-2883

PROOF OF SERVICE

I, _____, process server, hereby certify that I have this day served via: _____ the foregoing Subpoena Duces Tecum by delivering a true and correct copy thereof on _____ at the office of _____, on this the _____ day of _____, 20____.

Process Server

Address: _____

Sworn to before me this the _____ day of _____, 20____.

[seal]

NOTARY

My commission expires:

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

PETITIONER

VS.

CAUSE NO. _____

RESPONDENT

ORDER GRANTING WRIT OF ASSISTANCE
FOR SUBPOENA DUCES TECUM
CONCERNING RECORDS PERTAINING TO CHILD

This cause comes before the Court on the Petition for Writ of Assistance which has been filed by the Guardian ad Litem for the minor child, _____. This request involves an investigation conducted by the _____ County Department of Child Protection Services [hereinafter: "DCPS"] (formerly the Department of Family and Children's Services, a division of the Mississippi Department of Human Services), concerning the minor child, and any related hearings that may have been conducted in the Youth Court of _____ County, Mississippi. By way of the Motion for Writ of Assistance, the Guardian ad Litem has requested pursuant to Rule 6 of the Uniform Rules of Youth Court Practice that this Court issue subpoenas duces tecum to the Youth Court of _____ County, and to the DCPS of _____ County, so that all records pertaining to the minor child, _____, can be provided to this Court for in camera review.

Under these circumstances, the Court is of the opinion that the request for Writ of Assistance is well-taken and should be sustained. Rule 6 of the Uniform Rules of Youth Court Practice provides that the Youth Court and DPCS shall provide the requested documents to this Court for *in camera* review and a determination as to whether the information in any such records should be disclosed to the parties in the proceedings before this Court.

Accordingly, it is hereby ORDERED that subpoenas duces tecum shall be issued by the Clerk of this Court to the Youth Court of _____ County and to the Department of Child Protection Services of _____ County, which shall provide to this Court all records pertaining to the minor child, _____. This Court will then conduct an *in camera* review of these records and decide whether these records will be disclosed to the Guardian ad Litem and the parties in the instant case, subject to the rules of confidentiality that apply to these records.

SO ORDERED, ADJUDGED, AND DECREED this the ____ day of _____, 20__.

Chancellor

Order Prepared By:

THE YOUTH COURT OF _____ COUNTY, MISSISSIPPI

IN RE: _____, a Minor

DOB: XX/XX/XXXX

Youth Court Case No. _____

MOTION FOR RELEASE OF YOUTH COURT RECORDS

Comes now, the undersigned, who has been duly appointed as Guardian ad Litem for the minor children, _____ and _____, in Cause No. _____ in the Chancery Court of _____ County, Mississippi, filing this Motion for Release of the Youth Court and DCPS records pertaining to these children, stating as follows:

1. The undersigned has been appointed by the Chancery Court of _____ County, Mississippi to serve as Guardian ad Litem for the minor children, _____ and _____, in Cause No. _____.

2. Pursuant to Rule 6 of the Uniform Rules of Youth Court Practice, the undersigned has previously filed a Motion for Writ of Assistance with the Chancery Court, requesting that subpoenas duces tecum be issued to the Youth Court of _____ County and to the _____ County Department of Child Protection Services [hereinafter: "DCPS"] for all records concerning the minor children, _____ and _____.

3. The Chancery Court granted that Motion, and the Chancery Clerk has issued subpoenas duces tecum in _____ v. _____, _____ County Chancery Court Cause No. _____.

4. As provided in Rule 6, URYCP, these subpoenas duces tecum direct that the records concerning the minor children be provided to Chancellor _____ for *in camera* review, and a determination as to whether any information in these records may be relevant to the issues raised between the parties in the Chancery Court proceedings.

5. These records, which are confidential pursuant to Miss. Code Ann. §§ 43-21-251 & 43-21-261 (West 2017), issued pursuant to the procedures set forth in Rule 6 of the Uniform Rules of Youth Court, include any investigations conducted by the _____ County DCPS, any counseling or other services provided by agency or counseling center, and any orders or dispositions concerning the minor children by the Youth Court of _____ County.

6. The Chancery Court Order concerning the issuance of the subpoenas duces tecum clearly indicates that in the event that any records are released to the parties in the Chancery Court proceedings, they will be bound by the same duties of confidentiality in regard to these records as are the parties in Youth Court proceedings.

7. The undersigned respectfully submits that the requirements for release of the Youth Court and DCPS documents for *in camera* review by the Chancellor have been satisfied. Therefore, the undersigned respectfully requests that these records be released in response to the subpoenas duces tecum and provided to the Chancellor _____ in the Chancery Court of _____ County, who shall take appropriate steps to preserve the confidentiality of these records.

8. The undersigned further requests such additional relief as may be warranted in the premises.

Respectfully submitted, this the _____ day of _____, 20_____.

Guardian ad Litem for the minor children,

_____ and _____

_____ MSB # _____

Guardian ad Litem

P.O. Box _____

_____, MS _____

Phone: _____

Fax: _____

E-mail: _____

CERTIFICATE OF SERVICE

I hereby certify that I have this day served via United States Mail, first class postage prepaid, and/or electronic service through the ECF system as provided under Rule 5 of the Mississippi Rules of Civil Procedure, a true and correct copy of the foregoing document to the following:

Attorney for Plaintiff:

Attorney for Defendant:

Respectfully submitted, this the _____ day of _____, 20_____.

xxxxxxxxxxxxxx, MSB #xxxxxx

IN THE COUNTY COURT OF DESOTO COUNTY, MISSISSIPPI
YOUTH COURT DIVISION

IN THE INTEREST OF XXXXXXXXXXXXX
DOB: XX/XX/XXXX

Youth Court Case No. # _____

**ORDER PERMITTING LIMITED DISCLOSURE
OF RECORDS INVOLVING CHILDREN**

ON THIS THE _____ DAY OF _____, 20____, THIS CAUSE comes before the Court on the ore tenus Motion of the Guardian Ad Litem representing _____, in a case pending In the _____ County Chancery Court, to have this Court direct the Clerk of Court and DeSoto County Division of Family and Children's Services, a division of the Mississippi Department of Human Services to comply with the Subpoena Duces Tecum authorized pursuant to an Order Granting Writ of Assistance that was issued by the Honorable _____, Chancellor, _____rd Chancery District in _____ v. _____, _____ County Chancery Court Cause No. _____.

The Youth Court Division of the County Court of DeSoto County, Mississippi has authority under Section 43-21-261 of the Mississippi Code Annotated and Rules 5 and 6 of the Uniform Rules of Youth Court Practice to order a limited disclosure of the child's records to the Movant, who is a judge of another court.

The Subpoena Duces Tecum of the _____ County Chancery Court, which was issued on _____, 20____ pursuant to the procedures set forth in Rule 6 of the Uniform Rules of Youth Court, seeks records pertaining to any investigations conducted by the

DeSoto County Division of Family and Children's Services, Mississippi Department of Human Services concerning the minor child, _____, and any related Orders that may have been conducted In the Youth Court of DeSoto County concerning the minor child, _____.

THEREFORE, IT IS HEREBY ORDERED that records involving _____ be disclosed to Chancellor _____. The Court further finds that disclosure of such records is required for the best interest of the child so that the Chancellor may determine if the Guardian Ad Litem and the parties have a right to inspect the records for any purposes enumerated in 43-21-261 of the Mississippi Code Annotated. Further, all records shall be delivered under seal to The Honorable _____, Chancellor, ____rd Chancery District so that he 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 parties pursuant to Rule 5 and 6 of the Uniform Rules of Youth Court Practice and the applicable statutes.

IT IS FURTHER ORDERED that no records, reports, investigations or information derived from the records which pertain to child abuse or neglect shall include the identity of the initial reporter;

IT IS FURTHER ORDERED that any records which are disclosed under this order and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed except as provided In this order. Any further disclosure of any record involving the child shall be made only under order of this Court.

SO ORDERED, ADJUDGED AND DECREED this the _____ day of _____, 20_____.

YOUTH COURT JUDGE

Order Prepared by:
