

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on May 29, 2015, the following order was made and entered:

**IN RE: REQUEST FOR PUBLIC COMMENT ON AMENDMENTS TO THE
RULES OF PROCEDURE FOR CHILD ABUSE AND NEGLECT
PROCEEDINGS**

On a former day, May 4, 2015, Nikki Tennis, Director, Division of Children's Services, presented proposed amendments to the Rules of Procedure for Child Abuse and Neglect Proceedings.

The Rules have been updated to reflect that West Virginia Code §§ 49-1-1 through 49-11-10 were repealed and recodified during the 2015 Regular Session of the West Virginia Legislature. The new enactment, West Virginia Code §§ 49-1-101 through 49-7-304, became effective ninety days after the February 19, 2015, approval date. The Rules have also been amended to reflect changes in legislation following passage of the federal Preventing Sex Trafficking and Strengthening Families Act, approved on September 29, 2014.

Upon review, the Court hereby approves a sixty-day period for public comment. **Comments may be filed, in writing, with the Clerk of the Court on or before July 28, 2015.** The proposed insertions are indicated by underscoring and deletions are indicated by strikethrough.

Rules of Procedure for Child Abuse and Neglect Proceedings

Rule 1. Scope of child abuse and neglect rules.

These rules set forth procedures for circuit courts in child abuse and neglect proceedings instituted pursuant to W. Va. Code § ~~49-6-1~~ 49-4-601, *et seq.* If these rules conflict with other rules or statutes, these rules shall apply.

Rule 2. Purposes of child abuse and neglect rules; construction and enforcement.

These rules shall be liberally construed to achieve safe, stable, secure permanent homes for abused and/or neglected children and fairness to all litigants. These rules are not to be applied or enforced in any manner which will endanger or harm a child. These rules are designed to accomplish the following purposes:

- (a) To provide fair, timely and efficient disposition of cases involving suspected child abuse or neglect;
- (b) To provide for judicial oversight of case planning;
- (c) To ensure a coordinated decision-making process;
- (d) To reduce unnecessary delays in court proceedings through strengthened court case management; and
- (e) To encourage the involvement of all parties, including children, in the litigation as well as the involvement of all community agencies and resource personnel providing services to any party.

Rule 3. Definitions.

As used in these rules, these terms are defined as follows:

- (a) "Adjudicatory hearing" shall mean the hearing contemplated by W. Va. Code § ~~49-6-2~~ 49-4-601 to determine whether a child has been abused and/or neglected as alleged in the petition;
- (b) "CASA" shall mean Court-Appointed Special Advocate as set forth in Rule 52;
- (c) "Child's case plan" shall mean the plan prepared by the Department pursuant to W. Va. Code §§ ~~49-6-5~~ 49-4-408 and 49-4-604 following an adjudication by the court that the child is an abused and/or neglected child;

(d)"Civil petition" shall mean the petition instituting child abuse and/or neglect proceedings under W. Va. Code § ~~49-6-1~~ 49-4-601;

(e)~~"Civil protection~~ Child abuse and neglect proceedings" shall mean proceedings instituted by the filing of a civil petition under W. Va. Code § ~~49-6-1~~ 49-4-601;

(f)"Department" shall mean the West Virginia Department of Health and Human Resources and any subdivision or any successor or assignee designated by law carrying out the statutory functions of the Department or agency thereof involved in the investigation, adjudication, or dispositional aspects of child abuse and/or neglect proceedings under W. Va. Code § ~~49-6-1~~ 49-4-601, *et seq.*;

(g)"Preliminary hearing" shall mean the hearing contemplated by W.Va. Code § ~~49-6-3(b)~~ 49-4-602 that is held within ten days of service of the petition when the court finds that the petition alleges facts demonstrating the existence of imminent danger to the child, whether or not the court has ordered immediate transfer of custody of the child to the Department or a responsible person. The hearing is held for the purpose of determining (1) whether there is reasonable cause to believe that the child is in imminent danger; (2) whether continuation in the home is contrary to the welfare of the child, setting forth the reasons; (3) whether the Department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home or whether an emergency situation made such efforts unreasonable or impossible; ~~and~~ (4) whether efforts should be made by the Department to facilitate the child's return, and if so, what efforts should be made; ~~and~~ (5) whether the child's school placement is in his or her school of origin, and if not, whether the change of school placement is in the child's best interests.

(h)"Permanency hearing" shall mean the hearing contemplated by W.Va. Code § ~~49-6-8~~ 49-4-608 to determine the permanency plan for the child. The hearing shall be conducted in accordance with Rule 36a;

(i)"Disposition hearing" shall mean the hearing contemplated by W. Va. Code § ~~49-6-5~~ 49-4-604 that is held after a child has been adjudged to be abused and/or neglected, at which the court reviews the child and family case plan filed by the Department and determines the appropriate disposition of the case and permanency plan for the family;

(j)"Family Case Plan" shall mean the plan prepared by the Department pursuant to W. Va. Code §§ ~~49-6-2(b), 49-6D-3 and 49-6-12~~ 49-4-408 and 49-4-604 following the grant of an improvement period;

(k)"Guardian *ad Litem*" means the attorney appointed to represent a child, or children as set forth in Rule 18a of the Rules of Procedure for Child Abuse and Neglect Proceedings;

(l) "Parent" or "parents" ~~means the child's natural parent(s), custodian(s), or legal guardian(s)~~ means an individual defined as a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds, pursuant to W.Va. Code § 49-1-204;

(m) "Parties" means the petitioner, co-petitioner, ~~the respondent or respondents~~, adjudicated battered parent, and ~~the child or children~~;

(n) "Permanent placement" of a child shall mean:

(1) The petition has been dismissed and the child has been returned to the home or to a relative with no custodial supervision by the Department;

(2) The child has been placed in the permanent custody of a non-abusive parent; or

(3) A permanent out-of-home placement of the child has been achieved following entry of a final disposition order. A permanent out-of-home placement has been achieved only when the child has been adopted, placed in a legal guardianship, placed in another planned permanent living arrangement (APPLA), or emancipated; and

(o) "Persons entitled to notice and the right to be heard" are persons other than parties who include the CASA when appointed, foster parents, preadoptive parents, or custodial relatives providing care for the child.

Rule 3a. Pre-petition Investigations.

(a) *Administrative Order Regarding Investigation.* — Upon receiving a written referral from a family court pursuant to Rule 48 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~~ 49-2-804 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~~ 49-4-605 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)~~ 49-4-602(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~~ 49-5-101; 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~~ 49-2-804 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.

Rule 4. Transfer and consolidation.

A circuit court before which a civil petition is filed pursuant to W. Va. Code § ~~49-6-1~~ 49-4-601, *et seq.*, may order any other proceeding pending before another circuit court, family court, or magistrate court which arises out of the same facts alleged in the civil petition or involves the question of whether such abuse and neglect occurred transferred to the court where the civil petition is pending and may consolidate such proceedings, except criminal and delinquency proceedings, all in accordance with Rule 42 of the Rules of Civil Procedure and W. Va. Code § 56-9-1.

Rule 4a. Venue.

Pursuant to W.Va. Code § ~~49-6-1(a)~~ 49-4-601(a), the Department ~~and/or~~ a reputable person may file a petition to initiate a ~~civil protection~~ child abuse and neglect proceeding in the circuit court in the county where the child resides. If the Department is a petitioner, the petition may also be filed where the alleged abuse and/or neglect occurred, where the custodial respondent or one of the other respondents resides, or to the judge of the court in vacation. Under no circumstances may a party file a petition in more than one county based on the same set of facts.

Rule 5. Contemporaneous civil, criminal, and other proceedings.

Under no circumstances shall a ~~civil protection~~ child abuse and neglect proceeding be delayed pending the initiation, investigation, prosecution, or resolution of any other proceeding, including, but not limited to, criminal proceedings.

Rule 6. Maintaining case on court docket.

Each civil child abuse and neglect proceeding shall be maintained on the circuit court's docket until permanent placement of the child has been achieved. The court retains exclusive jurisdiction over placement of the child while the case is pending, as well as over any subsequent requests for modification, including, but not limited to, changes in permanent placement or visitation, except that (1) if the petition is dismissed for failure to state a claim under Chapter 49 of the W. Va. Code, or (2) if the petition is dismissed, and the child is thereby ordered placed in the legal and physical custody of both of his/her cohabitating parents without any visitation or child support provisions, then any future child custody, visitation, and/or child support proceedings between the parents may be brought in family court. However, should allegations of child abuse and/or neglect arise in the family court proceedings, then the matter shall proceed in compliance with Rule 3a.

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~~ 49-4-601, *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.

Rule 7. Time computation; extensions of time and continuances.

Time frames prescribed in these rules shall be computed in accord with Rule 6(a) of the W. Va. Rules of Civil Procedure.

Except as provided for in Rule 5, extensions of time and continuances beyond the times specified in these rules or by other applicable law shall be granted only for good cause,

regardless of whether the parties are in agreement. If a continuance is granted in accordance with this rule, the court shall set forth in a written order its reasons for finding good cause.

Rule 8. Testimony of children; inclusion of children in hearings and multidisciplinary treatment team meetings.

(a) *Restrictions on the testimony of children.* — Notwithstanding any limitation on the ability to testify imposed by this rule, all children remain competent to testify in any proceeding before the court as determined by the Rules of Evidence and the Rules of Civil Procedure. However, there shall be a rebuttable presumption that the potential psychological harm to the child outweighs the necessity of the child's testimony and the court shall exclude this testimony if the potential psychological harm to the child outweighs the necessity of the child's testimony. Further, the court may exclude the child's testimony if (A) the equivalent evidence can be procured through other reasonable efforts; (B) the child's testimony is not more probative on the issue than the other forms of evidence presented; and (C) the general purposes of these rules and the interest of justice will best be served by the exclusion of the child's testimony.

(b) *Procedure for taking testimony from children.* — The court may conduct in camera interviews of a minor child, outside the presence of the parent(s). The parties' attorneys shall be allowed to attend such interviews, except when the court determines that the presence of attorneys will be especially intimidating to the child witness. When attorneys are not allowed to be present for in camera interviews of a child, the court shall, unless otherwise agreed by the parties, have the interview electronically or stenographically recorded and make the recording available to the attorneys before the evidentiary hearing resumes. Under exceptional circumstances, the court may elect not to make the recording available to the attorneys but must place the basis for a finding of exceptional circumstances on the record. Under these exceptional circumstances, the recording only will be available for review by the Supreme Court of Appeals. When attorneys are present for an in camera interview of a child, the court may, before the interview, require the attorneys to submit questions for the court to ask the child witness rather than allow the attorneys to question the child directly, and the court may require the attorney to sit in an unobtrusive manner during the in camera interview. Whether or not the parties' attorneys are permitted to attend the in camera interview, they may submit interview questions and/or topics for consideration by the court.

(c) *Sealing of child's testimony.* — If an interview was recorded and disclosed to the attorneys, the record of the child's testimony thereafter shall be sealed and shall not be opened unless: (1) Ordered by the court for good cause shown; or (2) For purposes of appeal.

(d) A child subject to a case may attend all or portions of hearings, unless the court deems such attendance inappropriate, and may attend all or portions of multidisciplinary treatment team meetings, unless the multidisciplinary treatment team deems such participation inappropriate. Consideration shall be given to the child's preferences and developmental maturity.

Rule 9. Use of closed circuit television testimony.

(a) In any case governed by these rules in which a child eleven (11) years old or less is to be a witness, the court, upon order of its own or upon motion of a party, may permit the child witness to testify through live, one-way, closed-circuit television whereby there shall be no transmission into the room from which the child witness is testifying.

(b) In any case in which a child over the age of eleven (11) years is to be a witness, the court, upon order of its own or upon motion of a party, and upon a finding of good cause, shall permit the child witness to testify through live, one-way, closed-circuit television whereby there shall be no transmission into the room from which the child witness is testifying.

(c) The testimony of the child witness shall be taken in any room, separate and apart from the courtroom, from which testimony of the child witness can be transmitted to the courtroom by means of live, one-way, closed-circuit television. The testimony shall be deemed as given in open court.

(d) The judge, the attorneys for the parties, and any other person the court permits for the purpose of providing support for the child in order to promote the ability of the child to testify shall be present in the testimonial room at all times during the testimony of the child witness. The judge may permit liberal consultation between counsel and the parties by adjournment, electronic means, or otherwise.

(e) The image and voice of the child witness, as well as the image of all other persons present in the testimony room, other than the operator, shall be transmitted live by means of live, one-way, closed-circuit television in the courtroom. The courtroom shall be equipped with monitors sufficient to permit the parties to observe the demeanor of the child witness during his or her testimony.

(f) The operator shall place herself or himself and the closed-circuit television equipment in a position that permits the entire testimony of the child witness to be transmitted to the courtroom.

(g) The child witness shall testify under oath, and the examination and cross-examination of the child witness shall, in all other respects, be conducted in the same manner as if the child witness testified in the courtroom.

(h) When the testimony of the child witness is transmitted from the testimonial room into the courtroom, the court stenographer shall record the testimony in the same manner as if the child witness testified in the courtroom.

(i) Under all circumstances, the image of the child witness transmitted shall include the entirety of his or her person ordinarily subject to observation by the human eye, subject to such limitations as may be unavoidable by reason of standard courtroom furnishings.

(j) Should it be required, for the purposes of identification that the person to be identified and the child witness be present in the courtroom at the same time, the court shall ensure that this meeting takes place after the child witness has completed his or her testimony; and this confrontation shall, to the extent possible, be accomplished in a manner that is nonthreatening to the child witness.

Rule 10. Discovery.

(a) The attorney for the child shall have access to the file kept by the Department and the file kept by the attorney for the petitioner, including all information set forth in W. Va. Code § ~~49-7-1~~ 49-5-101, and the attorney may make such use thereof as may be appropriate to the case, subject to such limitations as the order of the court shall require.

(b) Unless otherwise ordered by the court pursuant to Rule 12, within three (3) days of the filing of the petition, the attorney for the petitioner shall provide to counsel for the respondent(s) or to the respondent(s) personally, if not represented by counsel, the attorney for the child, and all other persons entitled to notice and the opportunity to be heard, the following information, as is within the possession, custody, or control of the attorney for the petitioner, the existence of which is known, or by some exercise of due diligence may become known, to the attorney for the petitioner:

(1) Any relevant written or recorded statements made by the respondents (or any one of them), or copies thereof, and the substance of any oral statements which the petitioner intends to offer in evidence at the trial made by the respondents (or any one of them);

(2) Copies of the respondent's(~~s~~) prior criminal records, if any;

(3) Copies of books, papers, documents, photographs, tangible objects, buildings, or places which are material to the preparation of the respondent's(~~s~~) case or are intended for use by the

attorney for the petitioner as evidence in chief at the trial or were obtained from or belonging to the respondent(s);

(4) Copies of results or reports of physical and/or mental examinations, if any, and copies of scientific tests and/or experiments, if any, which are material to the preparation of the respondent's(s') case or are intended for use by the attorney for the petitioner as evidence in chief at the trial; and

(5) A written list of names and addresses of all witnesses whom the attorney for the petitioner intends to call in the presentation of the case-in-chief, together with any record of prior convictions of any such witnesses.

(c) Not less than five (5) days prior to any hearing wherein the respondent(s) intends(s) to introduce evidence, the respondent(s) shall provide to the attorney for the petitioner, the attorney for the child, and all other persons entitled to notice and the right to be heard, the following information: (1) Copies of books, papers, documents, photographs, tangible objects, buildings, or places which are within the possession, custody, or control of the respondent(s) and which the respondent(s) intends(s) to introduce as evidence in chief at the trial;

(2) Copies of any results and reports of physical and/or mental examinations, if any, and copies of scientific tests and/or experiments, if any, made in connection with the particular case, if any of such copies are within the possession or control of the respondent(s), which the respondent(s) intends(s) to introduce as evidence in chief at the trial or which were prepared by a witness whom the respondent(s) intends(s) to call at the trial when the results and/or reports relate to his or her testimony; and

(3) A written list of the names and addresses of the witnesses the respondent(s) intends(s) to call in the presentation of the case-in-chief.

(d) The disclosure provided for in this rule is not intended to limit the amount or nature of disclosure in these cases. This rule merely establishes the minimum amount of disclosure required.

(e) If, prior to or during any hearing, a party discovers additional evidence or material that should have been disclosed, that party shall promptly notify all other parties and their counsel, persons entitled to notice and the right to be heard, and the court of the existence of the additional evidence or material.

Rule 11. Motion to compel, limit, or deny discovery.

(a) Any party receiving a written request to make information, documents, records, or evidence available for inspection, testing, copying, or photographing shall, within two (2) days, excluding weekends and holidays, comply with the request or provide a written explanation of the reasons for noncompliance to the parties and the court;

(b) A party whose request for discovery is not fully complied with may file a motion for an order compelling discovery. A motion to compel discovery shall set forth the request for discovery, describe why the items or information sought are discoverable, and specify how the request was not in compliance;

(c) A party receiving a discovery request may file a motion to deny discovery or permit a limited response. The motion shall set forth the request for discovery and set forth reasons why the discovery should be denied or the response should be permitted to be limited or subject to conditions; and

(d) The court shall hear and rule on a discovery motion within seven (7) days after it is filed. Among other things, the court may:

(1) Grant the requested discovery and specify the time within which it must be provided;

(2) Order reciprocal discovery;

(3) Order appropriate sanctions for any clear misuse of discovery or arbitrary delay or refusal to comply with a discovery request; and

(4) Deny, limit, or set conditions on the requested discovery.

Rule 12. Judicial management of discovery.

(a) Upon its own motion or upon the request of a party, the court may limit discovery methods and specify its overall timing and sequence provided that each party shall be allowed a reasonable opportunity to obtain information needed for the preparation of his or her case.

(b) Any party moving for a continuance on the ground that discovery is likely to delay a hearing set by the court shall promptly send written notice to the court stating the need for the discovery and the extent of the likely delay.

Rule 13. Preservation of records and exhibits.

The proceedings shall be recorded and transcripts produced according to the provisions of W. Va. Code § ~~49-6-2(c) and 2(e)~~ 49-4-601(k). Exhibits admitted into evidence shall be retained by the court for two (2) years or until dismissal of the proceedings from the court's docket, whichever occurs later, unless preservation of the exhibit is impractical or the parties agree that it is no longer necessary.

Rule 14. Telephone or video conferences.

The court may hear motions and conduct conferences relating to discovery, service of process, or case scheduling by telephone or video conference call. By agreement of the parties or motion filed in accord with Rule 17(c), the court may hear testimony by telephone or video conference call.

Rule 15. Visitation and other communication with child.

If at any time the court orders a child removed from the custody of his or her parent(s) and placed in the custody of the Department or of some other responsible person, the court may make such provision for reasonable visitation, telephone or video calls, letters, email, or other communication as is consistent with the child's well-being and best interests. The court shall assure that any supervised visitation, telephone or video calls, letters, email, or other communication shall occur in surroundings and in a safe place, dignified, and suitable for visitation, taking into account the child's age and condition. The person requesting visitation shall set forth his or her relationship to the child and the degree of personal contact previously existing with the child. In determining the appropriateness of granting visitation rights to the person seeking visitation, the court shall consider whether or not the granting of visitation would interfere with the child's case plan and the overall effect granting or denying visitation will have on the child's best interests. The visitation order of the circuit court shall be enforceable upon entry unless a stay of execution of said order is issued by the circuit court or the Supreme Court of Appeals. The effect of entry of an order of termination of parental rights shall be, *inter alia*, to prohibit all contact and visitation between the child who is the subject of the petition and the parent who is the subject of the order and the respective grandparents,¹ unless the Court finds the child consents and it is in the best interest of the child to retain a right of visitation. Visitation between the child and his siblings shall continue, and a plan for regular contact between siblings, where they are not placed together, shall be incorporated into the

¹ This rule is intended to neither increase nor decrease any rights of the grandparents as set forth in W.Va. Code § ~~49-6-1~~ 49-4-601, et seq. and ~~48-2B-1 et seq.~~ [see now § 48-10-101, et seq.].

permanent plan for the child whenever possible, unless the court finds it is not in the best interest of both the child and his siblings to retain a right of visitation.

Rule 16. Emergency custody.

(a) *Emergency custody pending filing of petition.* — Proceedings for emergency custody of a child before a petition is filed and without a circuit court order shall be governed by the provisions of W. Va. Code §§ ~~49-6-3(e)~~ 49-4-301 (emergency custody by law enforcement), 49-4-302 (emergency custody ordered by family court), and ~~49-6-9~~ 49-4-303 (emergency removal by the Department).

(b) *Continuation or transfer of emergency custody upon filing of petition.* — Proceedings for continuation of or temporary transfer of emergency custody at the time the petition is filed shall be governed by the provisions of W. Va. Code § ~~49-6-3(a)~~ 49-4-602.

(c) *Transfer of custody following filing of petition.* — If at any time during the pendency of child abuse and/or neglect proceedings, the court determines the child is in imminent danger, as defined by W. Va. Code § ~~49-1-3(7)~~ 49-1-201, the court may order the child placed into the custody of the Department or a responsible person in accordance with the provisions of W. Va. Code § ~~49-6-3(b)~~ 49-4-602. If custody has been taken pursuant to this provision after the conclusion of the final adjudicatory hearing, custody of the child may continue in the Department or a responsible person pending conclusion of the final disposition hearing.

(d) *Requirement of hearing on emergency custody taken during the pendency of child abuse and neglect proceeding.* — Regardless of whether the court has previously granted the Department legal custody of a child, if the Department takes physical custody of a child during the pendency of a child abuse and neglect case (also known as removing the child) due to a change in circumstances and without a court order issued at the time of the removal, the Department must immediately notify the court, and a hearing shall take place within 10 days to determine if (1) there is imminent danger to the physical well-being of the child and (2) there is no reasonably available alternative to removal of the child.

(e) *Findings in removal order.* — An order removing a child from his or her home and placing the child in the custody of the Department must state (1) that there is reasonable cause to believe that the child is in imminent danger; (2) that continuation in the home is contrary to the welfare of the child, setting forth the reasons; (3) whether the Department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home or that an emergency situation made such efforts unreasonable or impossible; and (4) whether efforts

should be made by the Department to facilitate the child's return, and if so, what efforts should be made.

Rule 16a. Required entry of support orders.

(a) *Entry of Support Orders.* — Every order in a child abuse and neglect proceeding that alters the custodial and decision-making responsibility for a child and/or commits the child to the custody of the Department of Health and Human Resources must impose a support obligation upon one or both parents for the support, maintenance and education of the child, pursuant to W.Va. Code § 49-4-801, et seq.

(b) *Use of Guidelines.* — Any order establishing a child support obligation in an abuse and neglect proceeding must use the *Guidelines for Child Support Awards* found in W. Va. Code § 48-13-101, *et seq.* The *Guidelines* may be disregarded, or the calculation of an award under the *Guidelines* may be adjusted, only if the court makes specific findings that use of the *Guidelines* is inappropriate.

(c) *Modifications.* — Any order establishing a child support obligation in a child abuse and neglect proceeding may be modified by the court upon motion of any party. An order granting modification of a support obligation must use the *Guidelines for Child Support Awards* found in W. Va. Code § 48-13-101, *et seq.*

(d) *Transfer to family court prohibited.* — No portion of a child abuse and neglect proceeding may be transferred or remanded to a family court for assessment of a child support obligation.

Rule 17. Pleadings allowed, Form of motions and other papers.

(a) *Pleadings.* — There shall be a verified petition and a verified answer. Upon mutual consent of the co-petitioners, the verified petition may have co-petitioners, in which case each petitioner must indicate which allegation(s) he/she verifies in the petition. If one of the petitioners is a parent, then that parent shall be appointed counsel pursuant to W. Va. Code § ~~49-6-3~~ 49-4-601(f), separate from the prosecuting attorney. The Department, a parent, or reputable person may move to be joined as a co-petitioner after the filing of the initial petition. No other pleading shall be allowed except by permission of the court. The petition shall not be taken as confessed. Other than in a criminal prosecution for false swearing, evidence shall not be given against an accused of any statement made by him in any pleadings filed pursuant to these rules.

(b) *Verified answer.* — Each respondent shall file and serve a verified answer upon the petitioner or counsel therefor and all other persons entitled to notice and the right to be heard no later

than 10 days after being served with the notice and petition required by law except that a respondent served by publication or other substituted service shall file and serve such answer within the time prescribed by such substituted service. The child or children are not required to file or serve an answer.

Each answer shall admit or controvert the allegations of the petition, state the relationship of the child or children to the respondent and respond to such other matters as are alleged therein.

No preliminary hearing need be continued because an answer has not been served nor shall any appearance at a preliminary hearing or the service or contents of any answer filed prevent a respondent from raising in the answer or by timely motion any issue formerly raised by special appearance or by a pleading filed before an answer.

(c) Motions and other papers. —

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is made in a written notice of the hearing on the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11 of the Rules of Civil Procedure.

(4) All motions must be accompanied by or contained within a notice of hearing setting forth the date and time of hearing on the motion.

(5) At the time of first hearing, the court shall require the parents to complete financial statement forms for determination of Title IV-D and Title IV-E eligibility, the necessary forms to be provided by the Department of Health and Human Resources, and those forms necessary to determine both indigence and/or possible child support obligations. No portion of the case may be transferred or remanded to family court for this purpose.

Rule 18. Contents of petition.

The petition shall be verified in accordance with W. Va. Code § ~~49-6-1~~ 49-4-601(b) and shall include the following:

(a) Citations to statutes relied upon in requesting the intervention of the court and how the alleged misconduct or incapacity comes within the statutory definition of neglect and/or abuse;

(b) A description of all of the children in the home or in the temporary care, custody, or control of the alleged offending parent(s), including name, age, sex, and current location, unless stating the location would endanger the child or seriously risk disruption of the current placement;

(c) A statement of facts justifying court intervention which is definite and particular and describes:

(1) The specific misconduct, including time and place, if known, or incapacity of the parent(s) and other person(s) responsible for the child's care; and

(2) Any supportive services provided by the Department or others to remedy the alleged circumstances.

(d) The relief sought; and

(e) Information as required by the Uniform Child Custody Jurisdiction and Enforcement Act, W. Va. Code § 48-20-101, *et seq.*

Rule 18a. Appointments; responsibilities of guardian ~~ad litem~~ ad litem.

(a) *Appointment.* — W.Va. Code § 49-6-2(a) 49-4-601(f) and the Guidelines for Children's Guardians *Ad Litem* in Child Abuse and Neglect Proceedings set forth in Appendix A of these Rules govern the appointment of a child's guardian *ad litem* in a child abuse and neglect proceeding. In the initial order resulting from the filing of an abuse and neglect petition, the circuit court appoints a guardian *ad litem* to represent a child from a list of qualified attorneys who have completed the required guardian *ad litem* training. A guardian *ad litem* may be appointed to represent more than one child unless the representation of more than one child creates a conflict of interest.

(b) *Responsibilities of guardian ad litem.* — A guardian *ad litem* should adhere to the Guidelines for Children's Guardians *Ad Litem* in Child Abuse and Neglect Proceedings set forth in Appendix A of these Rules and submit a written report to the court and provide a copy to all parties at least five (5) days prior to the disposition hearing that complies with the requirements set forth in Section D(8) of the Guidelines and Appendix B of these Rules. Upon petition of the guardian *ad litem*, the court, in its discretion, may seal the report or redact information contained in the report.

Rule 19. Amendments to petition.

(a) *Amendments prior to adjudicatory hearing.* — The court may allow the petition to be amended at any time until the final adjudicatory hearing begins, provided that an adverse party is granted sufficient time to respond to the amendment.

(b) *Amendments after the adjudicatory hearing.* — If new allegations arise after the final adjudicatory hearing, the allegations should be included in an amended petition rather than in a separate petition in a new civil action, and the final adjudicatory hearing shall be re-opened for the purpose of hearing evidence on the new allegations in the amended petition.

(c) *Amendments based on allegations against a co-petitioner.* — If allegations arise against a co-petitioner during the pendency of the case, then the petition may be amended, including a realignment of the parties.

(d) *Amendments after preliminary hearing in which the Department has been given temporary custody.* — If the petition is amended after the conclusion of a preliminary hearing in which custody has been temporarily transferred to the Department or a responsible person, it shall be unnecessary to conduct another preliminary hearing.

Rule 20. Notice of first hearing.

The petition and notice of the first hearing shall provide at least ten (10) days notice, unless the first hearing is a preliminary hearing regarding emergency custody pursuant to W. Va. Code § 49-6-3 49-4-602, in which case the parties and all persons entitled to notice and the right to be heard must be provided at least five (5) days actual notice. The notice of hearing shall specify the time and place of the first hearing, the right of parties to counsel, and the fact that the proceeding can result in the permanent termination of parental, custodial or guardianship rights. The court shall send a copy of the petition and notice of first hearing to the appropriate CASA representative, if one is appointed.

Rule 21. Effect of personal service on only one parent.

The judge may permit the ~~civil protection~~ child abuse and neglect proceeding to go forward after one parent personally is served, if it is established on the record that there have been diligent but unsuccessful efforts to serve all other parties and requisites of W. Va. Code § 49-6-1 49-4-601 have been met. When a child is found in this state and is under the protection of the court and no parent or custodian has been found within this jurisdiction, the court may order service of the notice by publication and proceed with the ~~civil protection~~ proceeding. No adjudicatory hearing may be held until the time for answer is set forth in the order of publication

shall have expired. Such a proceeding shall be effective against the interests to parents and custodians to the extent permissible under general law.

Rule 22. Preliminary hearing.

(a) *Timing of preliminary hearing.* — If at the time the petition was filed, the court placed or continued the child in the emergency custody of the Department or a responsible person, a preliminary hearing on emergency custody shall be initiated within ten (10) days after the continuation or transfer of custody is ordered as required by W. Va. Code § ~~49-6-3(a)~~ 49-4-602.

(b) *Transfer of custody after the filing of the petition.* — If the court does not transfer custody at the time the petition is filed, but believes at any time in the proceeding that the child is in imminent danger, as defined in W. Va. Code § ~~49-6-3(a)~~ 49-1-201, the court may transfer temporary custody as provided in W. Va. Code § ~~49-6-3(b)~~ 49-4-602 or Rule 16(c). If the court has continued or transferred temporary custody to the Department or a responsible person following the preliminary hearing and further amendments and additions are made to the petition or further facts are developed which support temporary custody, another preliminary hearing is not required.

(c) *Waiver or stipulation of preliminary hearing.* — A preliminary hearing may be waived or stipulated if the court determines (1) that the parties and persons entitled to notice and the right to be heard understand the content and consequences of the waiver or stipulation and voluntarily consent, and (2) that the waiver or stipulation of the preliminary hearing meets the purposes of these rules and controlling statutes and is in the best interests of the child. The court shall hear any objection to the waiver or stipulation of the preliminary hearing by any party or person entitled to notice and the right to be heard. The waiver or specific stipulations shall be incorporated into the order reflecting the preliminary hearing.

Rule 23. Preadjudicatory improvement period; family case plan; status conference.

(a) *Preadjudicatory improvement period.* — At any time prior to the final adjudicatory hearing, including at the preliminary hearing or emergency custody proceedings, a respondent may move for a pre-adjudicatory improvement period in accordance with W. Va. Code §§ ~~49-6-2(b)~~ and ~~49-6-12(a)~~ 49-4-610. If the motion is granted, the court shall order the Department to submit the family case plan within thirty (30) days of such order, which family case plan shall contain the information required by W. Va. Code §§ ~~49-6D-3~~ 49-4-408 and 49-4-604. The family case plan shall be formulated with the assistance of all parties, counsel, and the multi-disciplinary treatment team. The family case plan and improvement period order should closely

track one another and taken together should constitute a program designed to remedy the circumstances which led to the filing of the petition. Reasonable efforts to place a child for adoption, or with a legal guardian or other permanent placement may be made at the same time.

(b) *Preadjudicatory improvement period status conferences.* — For the duration of the preadjudicatory improvement period, in accordance with W. Va. Code § ~~49-6-12(a)~~ 49-4-610, the court shall convene a status conference within sixty (60) days of the granting of the improvement period or within ninety (90) days of the granting of the improvement period if the court orders the Department to submit a report as to the respondent's(s') progress in the improvement period within sixty (60) days of the order granting the improvement period. At the status conference, the ~~multi-disciplinary~~ multidisciplinary treatment team shall attend and report as to progress and developments in the case. The court may require or accept progress reports or statements from other persons, including the parties, service providers, and persons entitled to notice and the right to be heard, provided that such reports or statements are provided to all parties. Pursuant to W. Va. Code § ~~49-6-12(a)~~ 49-4-610, a preadjudicatory improvement period shall not exceed three months. If the respondent(s) fail to comply with the terms and conditions of the improvement period or evidence an inability to remediate the circumstances giving rise to the abuse and/or neglect, any party may file a motion to revoke the improvement period.

Rule 24. Adjudicatory prehearing conference.

(a) *Adjudicatory prehearing conference.* — Prior to the final adjudicatory hearing, the court may convene a prehearing conference on its own motion or upon the request of any party.

(b) *Subjects of adjudicatory prehearing conference.* — At the adjudicatory prehearing conference, the court may:

- (1) Review efforts to locate and serve all the parties;
- (2) Advise unrepresented parties concerning their right to counsel and to appointed counsel, in which case the conference shall be reconvened at a later date;
- (3) Determine whether the child shall be present and testify at adjudication and, if so, under what conditions;
- (4) Conclude any unresolved discovery matters;
- (5) Identify issues of law and fact for adjudication;

(6) Require the parties to develop a list of possible witnesses and brief summaries of their testimony;

(7) Determine the needs of out-of-town witnesses regarding scheduling; and

(8) Confirm the date and estimate the length of the adjudicatory hearing.

(c) *Additional information.* — The parties shall have a continuing obligation to update information provided during the adjudicatory prehearing conference. If the additional information constitutes surprise, the court shall allow the surprised party adequate time and opportunity to prepare and respond.

(d) *Time frame.* — The court may schedule a final prehearing conference within five (5) days of the adjudicatory hearing to determine whether the parties or other persons entitled to notice and the right to be heard have notice of the hearing, the number and identity of the witnesses that each party intends to call and the estimated length of their testimony, and any other matter which may affect the conduct of the adjudicatory hearing.

Rule 25. Time of final adjudicatory hearing.

When a child is placed in the temporary custody of the Department or a responsible person pursuant to W. Va. Code § ~~49-6-3(a)~~ 49-4-602, the final adjudicatory hearing shall commence within thirty (30) days of the temporary custody order entered following the preliminary hearing and must be given priority on the docket unless a preadjudicatory improvement period has been ordered. In all other cases, the final adjudicatory hearing shall commence within thirty (30) days of the filing of the petition or, if a preadjudicatory improvement period has been ordered, as soon as possible, but no later than ~~sixty (60)~~ thirty (30) days, after the conclusion of such preadjudicatory improvement period. Where a respondent has been served, no order adjudicating that such respondent has abused or neglected the child concerned until the time for answer for such respondent has expired and, if the answer is timely served, the respondent has been afforded at least 20 days from the date the answer was filed to prepare for adjudication or has waived such opportunity to prepare. The final adjudicatory hearing shall be conducted in accordance with the provisions of W. Va. Code § ~~49-6-2(c) and -2(d)~~ 49-4-601(i).

Rule 26. Stipulated adjudications, uncontested petitions, contents of written reports and admissions.

(a) *Required information.* — Any stipulated or uncontested adjudication shall include the following information:

(1) Agreed upon facts supporting court involvement regarding the respondent's(~~s~~) problems, conduct, or condition; and

(2) A statement of respondent's(~~s~~) problems or deficiencies to be addressed at the final disposition.

(b) *Voluntariness of consent.* — Before accepting a stipulated or uncontested adjudication, the court shall determine that the parties understand the content and consequences of the admission or stipulation, the parties voluntarily consent, and that the stipulation or uncontested adjudication meets the purposes of these rules and controlling statute and is in the best interests of the child.

(c) *Contents of written reports.* — The court may take judicial notice of written reports which constitute public records and, when so admitted into evidence, give thereto such weight as may be appropriate. Any party may request the opportunity to be heard with respect to such reports under Rule 201(e) of the Rules of Evidence. Reasonable efforts should be made by parties and the court to inform all parties and all other persons entitled to notice and the right to be heard of the intention to submit or consider such reports to the end that those parties and other persons desiring to be heard with respect thereto may adequately prepare.

(d) *Effect of admissions by respondents.* — Admissions by a respondent properly contained in an answer and any written stipulations made by a respondent may be admitted into evidence at any stage of the proceedings and given such weight by the court as may be appropriate if the court finds that such admissions or stipulations are reliable. If the reliability of such admissions or stipulations is challenged for fraud, duress or other like cause, the court shall determine the issues thus drawn on the record. Extra judicial admissions by a respondent shall be admitted into evidence under any circumstances permitted by the rules of evidence.

Rule 27. Findings; adjudication order.

At the conclusion of the adjudicatory hearing, the court shall make findings of fact and conclusions of law, in writing or on the record, as to whether the child is abused and/or neglected in accordance with W. Va. Code § ~~49-6-2(e)~~ 49-4-601(i). The court shall enter an order of adjudication, including findings of fact and conclusions of law, within ten (10) days of the conclusion of the hearing, and the parties and all other persons entitled to notice and the right to be heard shall be given notice of the entry of this order.

Rule 28. Disposition report by Department – The Child's case plan; contents of the child's case plan.

(a) The Department shall prepare a child's case plan as required by W. Va. Code §§ ~~49-6-5 and 49-6D-3~~ 49-4-408 and 49-4-604, in the format approved by the Supreme Court of Appeals of West Virginia and the Department. If parental rights have not been terminated, the plan should include, where applicable, the requirements of the family case plan ~~under W. Va. Code § 49-6D-3~~. Parents, children capable of expressing their preferences, foster parents or relative caregivers, and members of the multidisciplinary treatment team should be included in the case plan development. The case plan should include, but need not be limited to, the following:

(1) A statement of the changes needed to correct the problems necessitating Department intervention, with timetables for accomplishing them;

(2) A description of services for the child, parents, and foster parents or relative caregivers that will assist the family in remedying the identified problems, including an explanation of the appropriateness, ~~and~~ availability of suggested services, and reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(3) A description of behavioral changes that must be evidenced by the respondents to correct the identified problems; ~~and~~

(4) The permanency plan and concurrent plan for the child, which are designed to achieve timely permanency for the child in the least restrictive setting available. Unless reasonable efforts to prevent removal or to preserve the family are not required, documentation must be provided to show reasonable efforts to prevent removal or to ensure reunification within the time frames set in the plan, as well as reasonable efforts to work toward the concurrent plan, which may be adoption, minor guardianship, another planned permanent living arrangement (APPLA), or emancipation; and

(5) When the child's permanency plan is APPLA, the Department shall document the efforts to place the child permanently with a parent, relative, or in a guardianship or adoptive placement and the steps taken to ensure that the foster family follows the "reasonable and prudent parent standard" to allow the child regular opportunities to engage in age- or developmentally-appropriate normal childhood activities.

(b) When the child has been in emergency protective care or temporary custody during the proceedings or the Department's recommendation includes placement of the child away from home, the report also shall include the following:

(1) A description of the efforts made by the Department to prevent the need for placement or the circumstances which made the offer of such efforts an unviable option; and

(2) A description of the efforts since placement to reunify the family, including services which were offered or provided or the reasons why such efforts would be unavailing or not in the best interest of the child.

(c) When the Department's recommendation includes placement of the child away from home, whether temporarily or permanently, the report also shall include the following:

(1) An explanation why the child cannot be protected from the identified problems in the home even with the provision of services or why placement in the home is not in the best interest of the child;

(2) Identification of relatives or friends who were contacted about providing a suitable and safe permanent placement for the child;

(3) A description of the recommended placement or type of home or institutional placement in which the child is to be placed, including its distance from the child's home and whether or not it is the least restrictive (most family-like) one available and including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parent's(s-)/respondent's(s-) home, facilitate return of the child to his or her own home, or the permanent placement of the child;

(4) Assurances that the placement of the child takes into account the appropriateness of the current education setting and the proximity to the school in which the child is enrolled at the time of placement; that the Department has coordinated with appropriate local education agencies to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement, including provision for reasonable travel; and if remaining in the same school is not in the child's best interests, that the Department and local education agencies have provided immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school;

(5) A suggested visitation plan including an explanation of any conditions to be placed on the visits;

(6) A statement of the child's special needs and the ways they should be met while in placement, including a plan for how the child will have regular opportunities to engage in age- or developmentally-appropriate normal childhood activities;

(7) The location of any siblings and, if siblings are separated, a statement of the reasons for the separation and the steps required to unite them as quickly as possible and to maintain regular contact during the separation if it is in each child's best interest;

(8) For children aged ~~16~~ 14 or older, the plan should specify services aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged 17 comes into a case, the Department must immediately provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The plan must include specific options on housing, health insurance, education, local opportunities for mentors, continuing support services, work force support, and employment services, and the plan should be as detailed as the child may elect. In addition to these requirements, when a child with special needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he or she is entitled to the appointment of a Department adult services worker to the multidisciplinary treatment team and coordination between the multidisciplinary treatment team and other transition planning teams, such as special education individualized education planning (IEP) teams;

(9) The ability of the parent(s) to contribute financially to placement; and

(10) The current address and telephone number of the parties or a statement why such information is not provided.

(d) When the Department's recommendation is for termination of parental rights, the report shall include those items set forth in subsections (b) and (c) above and also the following:

(1) A description of the efforts made by the Department to prevent the need for placement or the circumstances which made the offer of such efforts an unviable option;

(2) A description of the efforts since placement to reunify the family, including services which were offered or provided or the reasons why such efforts would be unavailing; and

(3) Any objections by any party to the contents of the child's case plan may be raised at the disposition hearing.

Rule 29. Notice of the child's case plan.

Copies of the child's case plan shall be provided to the parties, their counsel, and persons entitled to notice and the right to be heard, at least five (5) judicial days prior to the disposition hearing.

Rule 30. Exchange of information before disposition hearing.

At least five (5) judicial days prior to the disposition hearing, each party shall provide the other parties, persons entitled to notice and the right to be heard, and the court a list of possible witnesses, with a brief summary of the testimony to be presented at the disposition hearing, and a list of issues of law and fact. Parties shall have a continuing obligation to update information until the time of the disposition hearing.

Rule 31. Notice of disposition hearing.

Notice of the date, time, and place of the disposition hearing shall be given to all parties, their counsel, and persons entitled to notice and the right to be heard.

Rule 32. Time of disposition hearing.

(a) *Time frame.* — The disposition hearing shall commence within forty-five (45) days of the entry of the final adjudicatory order unless an improvement period is granted pursuant to W. Va. Code § ~~49-6-12(b)~~ 49-4-610(2), and then no later than sixty (60) days.

(b) *Accelerated disposition hearing.* — The disposition hearing immediately may follow the adjudication hearing if:

- (1) All the parties agree;
- (2) A child's case plan meeting the requirements of W. Va. Code §§ ~~49-6-5 and 49-6D-3~~ 49-4-408 and 49-4-604 was completed and provided to the court or the party or the parties have waived the requirement that the child's case plan be submitted prior to disposition; and
- (3) Notice of the disposition hearing was provided to or waived by all parties as required by these Rules.

Rule 33. Stipulated disposition, contents of stipulation, voluntariness.

(a) *Required information.* — Unless otherwise ordered by the court, any stipulated or uncontested disposition shall include the following information:

- (1) The legal custody and placement of the child;
- (2) The changes needed to end the court's involvement;

- (3) Services to be provided to the child and family;
- (4) The terms and conditions of the family case plan, unless the stipulated disposition terminates parental rights or places the child in legal guardianship or permanent foster care;
- (5) The schedule of multidisciplinary treatment team meetings and permanent placement review conferences, including the first date and time of each;
- (6) Restraining orders controlling the conduct of any party who is likely to frustrate the dispositional order;
- (7) If a child is to be placed away from home, the proposed stipulated disposition shall also address:
 - (A) The type of placement;
 - (B) Terms of visitation and other parental involvement, including information about the child to be provided to the parents;
 - (C) Steps to meet the child's special needs while in placement; and
 - (D) If the child is separated from siblings, steps to unite them and/or to maintain regular contact during the separation;
- (8) Any other aspect of the case plan the parties want included in the court's order.
- (9) A stipulated disposition involving a temporary out-of-house placement cannot be permitted beyond the time allowable by statute for an improvement period.
- (b) *Voluntariness of consent.* — Before determining whether or not to accept a stipulation of disposition, the court shall determine that the parties and persons entitled to notice and the right to be heard, understand the contents of the stipulation and its consequences, and that the parties voluntarily consent to its terms. The court must ultimately decide whether the stipulation of disposition meets the purposes of these rules, controlling statutes and is in the best interests of the child. The court shall hear any objection to the stipulation of disposition made by any party or persons entitled to notice and the right to be heard. The stipulations shall be specifically incorporated in their entirety into the court's order reflecting disposition of the case.

Rule 34. Rulings on objections to the child's case plan.

If objections to the child's case plan are raised at the disposition hearing, the court shall enter an order:

- (a) Approving the plan;
- (b) Ordering compliance with all or part of the plan;
- (c) Modifying the plan in accordance with the evidence presented at the hearing; or
- (d) Rejecting the plan and ordering the Department to submit a revised plan with thirty (30) days. If the court rejects the child's case plan, the court shall schedule another disposition hearing within forty-five (45) days.

Rule 35. Uncontested termination of parental rights and contested termination and contests to the case plan.

(a) *Uncontested termination of parental rights.* — If a parent voluntarily relinquishes parental rights or fails to contest termination of parental rights, the court shall make the following inquiry at the disposition hearing:

(1) If the parent(s) ~~is/are~~ present at the hearing but ~~fail(s)~~ fails to contest termination of parental rights, the court shall determine whether the parent(s) fully ~~understand(s)~~ understands the consequences of a termination of parental rights, ~~is/are~~ aware of possible less drastic alternatives than termination, and ~~was/were~~ informed of the right to a hearing and to representation by counsel.

(2) If the parent(s) ~~is/are~~ not present in court and ~~has/have~~ not relinquished parental rights but ~~has/have~~ failed to contest the termination, the petitioner shall make a prima facie ("on its face") showing that there is a legal basis for the termination of parental rights and the court shall determine whether the parent(s) ~~was/were~~ given proper notice of the proceedings.

(3) If the parent(s) ~~is/are~~ present in court and voluntarily ~~has/have~~ signed a relinquishment of parental rights, the court shall determine whether the parent(s) fully ~~understand(s)~~ understands the consequences of a termination of parental rights, ~~is/are~~ aware of possible less drastic alternatives than termination, and ~~was/were~~ informed of the right to a hearing and to representation by counsel.

(4) If the parent(s) ~~is/are~~ not present in court but ~~has/have~~ signed a relinquishment of parental rights, the court shall determine whether there was compliance with all state law requirements regarding a written voluntary relinquishment of parental rights and whether the parent(s) ~~was/were~~ thoroughly advised of and understood the consequences of a termination of parental

rights, is/~~are~~ aware of possible less drastic alternatives than termination, and was/~~were~~ informed of the right to a hearing and to representation by counsel.

(b) Contested terminations and contests to case plan. —

(1) When termination of parental rights is sought and resisted, the court shall hold an evidentiary hearing on the issues thus made, including the issues specified by statute and make such findings with respect thereto as the evidence shall justify. Upon making such findings, the court shall then determine if the case plan or plans before the court require amendment by reason of the findings of the court and require such modification of the plan or plans as may be appropriate.

(2) The guardian *ad litem* for the children, the respondents and their counsel, and persons entitled to notice and the right to be heard, shall advise at the dispositional hearing and, where termination is sought after the court's findings on the factual issues surrounding termination are announced, whether any such persons seek a modification of the child's case plan as submitted or desire to offer a substitute child's case plan for consideration by the court. The court shall require any proposed modifications or substitute plans to be promptly laid before the court and take such action, including the receipt of evidence with respect thereto, as the circumstances shall require. It shall be the duty of all the parties to the proceeding and their counsel to cooperate with the court in making this information available to the court as early as possible. It shall also be appropriate for the court to require alternative provisions of a case plan to be submitted prior to the taking of evidence in a dispositional hearing to suit alternative possible findings of the court after evidence is taken on any contested issues. Except as to the establishment of grounds for termination and the establishment of other necessary facts, dispositional hearings are not intended to be confrontational hearings; rather such are concerned with the best interests of the abused or neglected children involved.

Rule 36. Findings; disposition order.

(a) Findings of fact and conclusions of law; time frame. — At the conclusion of the disposition hearing, the court shall make findings of fact and conclusions of law, in writing or on the record, as to the appropriate disposition in accordance with the provisions of W. Va. Code § 49-6-5 49-4-604. The court shall enter a disposition order, including findings of fact and conclusions of law, within ten (10) days of the conclusion of the hearing.

(b) Permanent placement review conference. — In the disposition order the court also shall state the date and time of the first permanent placement review conference required under these Rules.

(c) *Contents of disposition order.* — The court also may include in the disposition order the following information:

- (1) Terms of visitation;
- (2) Services to be provided to the child and family;
- (3) Restraining orders controlling the conduct of any party who is likely to frustrate the disposition order;
- (4) Actions to be taken by the parent(s) to correct the identified problems;
- (5) Conditions regarding the child's placement, including steps to meet the child's special needs while in placement;
- (6) If the child is separated from siblings, steps to unite them and/or to maintain regular contact during the separation if it is in the best interest of each child; and
- (7) Terms and conditions of the family case plan or the child's case plan.

(d) *Notice of permanency hearing.* — If a permanency hearing must be conducted pursuant to W. Va. Code § ~~49-6-5a~~ 49-4-608, then the disposition order shall state the date and time of the permanency hearing.

(e) *Interaction with administrative processes of the Department.* — The court has exclusive jurisdiction to determine the permanent placement of a child. Placement of a child shall not be disrupted or delayed by any administrative process of the Department, including an adoption review committee or grievance procedure.

Rule 36a. Permanency hearing.

(a) If the court finds any hearing that the Department is not required to make reasonable efforts to preserve the family, then a permanency hearing must be held within 30 days following entry of the order so finding. The purpose of the permanency hearing is to determine the appropriate permanent placement and plan for the child. All parties, counsel, and persons entitled to notice and the right to be heard, shall be given notice of this hearing at least 5 judicial days in advance thereof.

(b) If the Court finds, at any stage of the proceeding, that reasonable efforts must be made by the Department to preserve the family or any part of it, then a permanency hearing must be conducted within one year from the date the child entered foster care which shall be deemed to be the earlier of the following:

- (i) The date of the first judicial finding that the child has been subjected to child abuse or neglect; or
- (ii) The date that is 60 days after the date on which the child is removed from the home.
- (c) In accordance with Rules 39 to 42, the court shall conduct permanent placement review conferences at least every three months thereafter to determine if the Department has made reasonable efforts to finalize the permanency plan for the child.

Rule 37. Improvement period; status conference.

If an improvement period is ordered following the final adjudicatory hearing or as an alternative disposition pursuant to W. Va. Code §§ ~~49-6-5(e)~~ 49-4-604(d) and ~~49-6-12(b) or (c)~~ 49-4-610(2) or (3), the court shall order the Department to submit a family case plan within thirty (30) days of such order containing the information required by W. Va. Code §§ ~~49-6-3~~ 49-4-408 and 49-4-604. The family case plan shall be formulated with the assistance of all parties, counsel, and the multidisciplinary treatment team. Reasonable efforts to place a child for adoption or with a legal guardian or other permanent placement may be made at the same time. In accord with W. Va. Code § ~~49-6-12(b) and 49-6-12(e)~~, 49-4-610(2) and (3), the court shall convene a status conference within sixty (60) days of the granting of the improvement period or within ninety (90) days of the granting of the improvement period if the court orders the Department to submit a report as to the respondent's(~~s~~) progress in the improvement period within sixty (60) days of the order granting the improvement period. The court shall thereafter convene a status conference at least once every three months for the duration of each improvement period, with notice given to any party and persons entitled to notice and the right to be heard. At the status conference, the multidisciplinary treatment team shall attend and report as to progress and developments in the case. The court may require or accept progress reports or statements from other persons, including the parties, service providers, and the CASA representative provided that such reports or statements are given to all parties.

Rule 38. Hearing after improvement period; final disposition.

No later than ~~sixty (60)~~ thirty (30) days after the end of the alternative disposition improvement period, the court shall hold a hearing to determine the final disposition of the case, including whether the conditions of abuse and/or neglect have been adequately improved in accordance with W. Va. Code § ~~49-6-5(e)~~ 49-4-604(d). Any party and persons entitled to notice and the right to be heard shall receive notice of the hearing. The court also shall determine the necessary disposition consistent with the best interests of the child. Within ten (10) days of the

conclusion of the hearing, the court shall enter a final disposition order in accordance with the provisions of Rule 37.

Rule 39. Permanent placement review.

(a) *Court monitoring of permanency plan.* — Following entry of a permanency hearing order, the court, with the assistance of the multidisciplinary treatment team, shall continue to monitor implementation of the court-ordered permanency plan for the child.

(b) *Time frame.* — At least once every three months until permanent placement is achieved as defined in Rule 6, the court shall conduct a permanent placement review conference, requiring the multidisciplinary treatment team to attend and report as to progress and development in the case, for the purpose of reviewing the progress in the permanent placement of the child.

(c) *Notice of hearing.* — Notice of the time and place of the permanent placement review conference shall be given to counsel of record, and all other persons entitled to notice and the right to be heard at least fifteen (15) days prior to the conference unless otherwise provided by court order. Neither a party whose parental rights have been terminated by the final disposition order nor his or her attorney shall be given notice of or participate in post-disposition proceedings.

(d) *Hearing.* — The court shall hold a hearing in connection with such review, and shall not conduct such review by agreed order.

Rule 40. Permanent placement review reports.

At least ten (10) days before the permanent placement review conference, the multidisciplinary treatment team and the Department shall provide to the court and to the parties progress reports describing efforts to implement the permanency plan and any obstacles to permanent placement. The court may require or accept progress reports or statements from other persons, including the parties, service providers, and the CASA representative, provided that such reports or statements are given to all parties prior to the placement review conference.

Rule 41. Permanent placement review conference.

(a) *Subjects of permanent placement review conference.* — Unless otherwise provided by court order, matters to be considered at the permanent placement review conference shall include a discussion of the reasonable efforts made to secure a permanent placement, including:

- (1) The extent to which problems necessitating Department intervention have been remedied and, if appropriate, the actions that should be taken by the respondent(s) to permit return of the child;
- (2) Services and assistance that were offered or provided to the family since the previous hearing or permanent placement review conference; reasonable accommodations provided in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services; and services needed in the future;
- (3) Compliance by the respondent(s) and Department with the case plan and with previous orders and recommendations of the court;
- (4) Recommended changes in court orders;
- (5) The ability and extent of the respondent(s) to contribute financially to the child's placement;
- (6) The appropriateness of the current placement, including its distance from the child's home and whether or not it is the least restrictive one (most family-like one) available;
- (7) The appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;
- (8) The Department's coordination with appropriate local education agencies to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement, including provision for reasonable travel, or if remaining in the same school is not in the child's best interests, the provision of immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school;
- (9) A summary of visitation and any recommended changes;
- (10) How the child's special needs were or were not met while in placement, including whether the child had regular opportunities to engage in age- or developmentally-appropriate normal childhood activities;
- (11) The location of any siblings and the steps that have been and will be taken to unite them as quickly as possible and to maintain regular contact during the separation if it is in the best interest of each child;

(12) For children aged ~~16~~ 14 or older, the specific services aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged 17 comes into a case, the Department must immediately provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The plan must include specific options on housing, health insurance, education, local opportunities for mentors, continuing support services, work force support, and employment services, and the plan should be as detailed as the child may elect. In addition to these requirements, when a child with special needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he or she is entitled to the appointment of a Department adult services worker to the multidisciplinary treatment team and coordination between the multidisciplinary treatment team and other transition planning teams, such as special education individualized education planning (IEP) teams;

(13) When the child's permanency plan is another planned permanent living arrangement (APPLA), the efforts to place the child permanently with a parent, relative, or in a guardianship or adoptive placement; the child's desired permanency outcome; and the steps taken to ensure that the foster family follows the "reasonable and prudent parent standard" to allow the child regular opportunities to engage in age- or developmentally-appropriate normal childhood activities.

~~(13)~~ (14) A recommendation and discussion regarding the child's return home either immediately or within the next six months.

(A) If return is recommended, it shall include a summary of:

(i) Necessary steps to make return possible and to minimize the disruptive effects of return;

(ii) The dangers to the child after return; and

(iii) Reunification services needed, including services to minimize any danger to the child after return;

(B) If return is not recommended, a recommendation and discussion regarding adoption of the child. If placement for adoption is recommended, it shall include a discussion of:

(i) The steps needed to bring about a termination of parental rights action; and

(ii) The time necessary to take such steps;

(C) If neither return home nor placement for adoption is recommended, a discussion of the following shall be included:

(i) Awarding legal guardianship or permanent custody to a specific individual or individuals. If recommended, a proposed time table, recommendations concerning the rights and responsibilities the biological parent(s) should retain, and recommendations concerning the rights and responsibilities of the guardian or custodian shall be addressed; and

(ii) Placement of the child permanently in foster care with specific foster parents. If recommended, a time table and recommendations concerning the terms of the permanent foster care agreement, and court order authorizing permanent foster care, and the continuing rights and responsibilities of the biological parents shall be addressed;

(D) If continued foster care is recommended, an explanation of why it continues to be appropriate for the child;

(E) If placement in a group home or institution is recommended:

(i) An explanation of why treatment outside a family environment is necessary, including a brief summary of supporting expert diagnoses and recommendations; and

(ii) A discussion of why a less restrictive, more family-like setting is not practical, including placement with specially trained foster parents;

(F) If emancipation or independent living is recommended for a child who has attained age sixteen (16) years, an explanation of why foster family care is no longer appropriate; a description of the skills needed by the child to prepare for adulthood; and a description of the ongoing support and services to be provided by the agency; and

(G) Concurrent alternative permanency plans.

(H) Any other matter relevant to implementation of the permanency plan.

(b) *Post-termination placement plan.* — Within ninety (90) days of the entry of the final termination order or decree for both parents, the Department responsible for placement of the child shall submit a written permanent placement plan to the court, the guardian ad litem, persons entitled to notice and the right to be heard, and other remaining parties, if any, for consideration at the permanent placement review. The plan shall include the following:

(1) A description of the Department's progress toward arranging an adoptive, legal guardianship, or permanent foster care home placement for the child;

(2) Where adoptive, legal guardians, or permanent foster care parents have not been selected, a schedule and a description of steps to be taken to place the child permanently;

- (3) A discussion of any special barriers preventing placement of the child for adoption, legal guardianship, or permanent foster care and how they should be overcome; and
- (4) A discussion of whether adoption and/or legal guardianship subsidy is needed and, if so, the likely amount and type of subsidy required.

The court shall continue to conduct a permanent placement review at least every three (3) months until permanent placement is achieved. The court shall hold a hearing in connection with such review, and shall not conduct such review by agreed order. Notice of such hearing shall be given to the Department, the child through his guardian ad litem, and persons entitled to notice and the right to be heard.

(c) *Stipulations.* — The parties may file written stipulations as to any matters to be considered at the permanent placement review conference but such written stipulations shall not be accepted in lieu of the conducting of the permanent placement review conference.

Rule 42. Findings at permanent placement review; order.

(a) *Findings of fact and conclusions of law; time frame.* — Within ten (10) days of the conclusion of the permanent placement review conference, the court shall enter an order determining whether the Department has made reasonable efforts to finalize the permanency plan for the child. The court shall also find whether permanent placement has been fully achieved within the meaning of Rule 6 and stating findings of fact and conclusions of law to support its determination.

(b) *Dismissal.* — If the court finds that permanent placement has been achieved, it may order the case dismissed from the docket.

(c) *Continuance.* — If the court finds that permanent placement has not been achieved, the court's order shall address those subjects set forth in Rule 41 as appropriate and shall state:

- (1) Changes in the terms of the child's case plan it deems necessary to effect a permanent placement of the child, with supporting findings of fact;
- (2) Changes in the terms of visitation and other parental involvement, if any;
- (3) Changes in services to be provided the parties and the child, if any;
- (4) Changes to the educational plan for the child to further the child's educational stability, if any;

- (5) Steps to be taken to assist a child aged ~~16~~ 14 or older with the development of a transitional plan;
 - (6) Restraining orders controlling the conduct of any party who is likely to frustrate the court's orders, if any;
 - (7) Additional actions to be taken by the parties to achieve permanent placement; and
 - (8) A date and time for the next placement review conference.
- (d) Findings when the permanency plan is another planned permanent living arrangement (APPLA). After asking the child for his or her desired permanency outcome, the court shall find whether APPLA is the best permanency plan for the child; review Department efforts to place the child permanently with a parent, relative, or in guardianship or adoptive placement; and find compelling reasons why it is not in the child's best interests to be placed permanently with a parent, relative, or in a guardianship or adoptive placement.

Rule 43. Time for permanent placement.

Permanent placement of each child shall be achieved within twelve (12) months of the final disposition order, unless the court specifically finds on the record extraordinary reasons sufficient to justify the delay.

Rule 44. Foster care review.

Nothing in these rules is intended to abrogate the responsibilities of the Department and the court with regard to the foster care case review system established by W. Va. Code §§ ~~49-2-14~~ 49-4-110 and ~~49-6-8~~ 49-4-608. Upon the filing of a foster care case review petition by the Department, the court may schedule a foster care case review hearing at the same time as the required permanent placement review conference contemplated by these rules. Such proceedings shall be conducted in accordance with the provisions of the pertinent statute and these rules.

Rule 45. Review following permanent placement; reporting permanent placement changes.

(a) *Discontinuation of permanent placement review.* — Permanent placement review shall be discontinued after permanent placement is consummated.

(b) *Reporting changes in permanent placement status.* — If the child is removed from an adoptive home or other permanent placement after the case has been dismissed, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the Department, and the child's counsel, and the court shall schedule a permanent placement review conference within sixty (60) days, with notice given to any appropriate parties and persons entitled to notice and the right to be heard. The Department shall convene a multidisciplinary treatment team meeting within thirty (30) days of the receipt of notice of permanent placement disruption.

Rule 46. Modification or supplementation of court order; stipulations.

A child, a child's parent (whose parental rights have not been terminated), a child's custodian, or the Department shall file a motion in the circuit court of original jurisdiction in order to modify or supplement an order of the court at any time; provided, that a dispositional order pursuant to W.Va. Code § ~~49-6-5(a)(6)~~ 49-4-604(b)(6) shall not be modified after the child has been adopted, pursuant to W.Va. Code § 49-4-606. The court shall conduct a hearing and, upon a showing of a material change of circumstances, may modify or supplement the order if, by clear and convincing evidence, it is in the best interest of the child. Provided: an order of child support may be modified if, by the preponderance of the evidence, there is a substantial change in circumstances, pursuant to W.Va. Code § 48-11-105. Adequate and timely notice of any motion for modification shall be given to the child's counsel, counsel for the child's parent(s) (whose parental rights have not been terminated) or custodian, and to the Department, as well as to other persons entitled to notice and the right to be heard. The court may consider a stipulated modification of an order, provided that the child has not been adopted as aforesaid, if the court determines that the parties and persons entitled to notice and the right to be heard understand the contents and consequences of the stipulation and voluntarily consent to its terms, that the stipulation meets the purposes of these rules and controlling statutes, and that the stipulation is in the best interest of the child.

Rule 47. Status conference.

The court may convene a status conference, upon its own motion or, if requested, by any party or person entitled to notice and the right to be heard, at any time during the proceedings to allow the parties, the multidisciplinary treatment team, persons entitled to notice and the right to be heard, or representatives of the Department to advise the court of pertinent developments

in the case or problems which arose during the formulation and implementation of a case plan. Where it appears to the court that any such issue cannot be resolved without the taking of evidence, the court may proceed to take evidence, if appropriate notice has been given in advance, or set such further hearing and require notice thereof to all remaining proper parties or persons entitled to notice and the right to be heard, as the court may be advised. Upon the taking of such evidence, the court shall make such findings in the appropriate post-dispositional order as are required to dispose of the issue thus raised.

Rule 48. Separate hearing on issue of paternity.

If the paternity of a child is at issue at any time during these proceedings, the court may set a special hearing to determine paternity and shall notify the Bureau for Child Support Enforcement office.

Rule 49. Accelerated appeal for child abuse and neglect and termination of parental rights cases.

Appeals of orders under W.Va. Code § ~~49-6-1~~ 49-4-601, *et seq.*, are governed by the ~~Revised~~ Rules of Appellate Procedure. Within thirty (30) days of entry of the order being appealed, the petitioner shall file a notice of appeal, including required attachments and copies, with the Office of the Clerk of the Supreme Court of Appeals of West Virginia, with service provided as prescribed by the ~~Revised~~ Rules of Appellate Procedure. All parties to the proceeding in the court from which the appeal is taken, including the guardian(s) ad litem for the minor children, shall be deemed parties in the Supreme Court of Appeals, unless the appealing party indicates on the notice of appeal that one or more of the parties below has no interest in the outcome of the matter. ~~Appeals may proceed without a transcript, as deemed appropriate by the Supreme Court of Appeals.~~ An appeal must be perfected within sixty (60) days of entry of the order being appealed. The circuit court from which the appeal is taken or the Supreme Court of Appeals may, for good cause shown, by order entered of record, extend such period, not to exceed a total extension of two months, if the notice of appeal was properly and timely filed by the party seeking the appeal. The filing of any motion to modify an order shall not toll the time for appeal. The Supreme Court of Appeals shall give priority to appeals of child abuse and/or neglect proceedings and termination of parental rights cases and shall establish and administer an accelerated schedule in each case, to include the completion of the record, briefing, oral argument, and decision.

Rule 50. Stays on appeal.

The filing of a petition for appeal does not operate to automatically stay the proceedings or orders of the circuit court in abuse, neglect, and/or termination of parental right cases, but the circuit court or the Supreme Court of Appeals may grant a stay upon a showing of good cause. Any party seeking a stay from the Supreme Court of Appeals pending an appeal of neglect, abuse, and/or termination of parental rights cases shall submit a written motion for the stay and a brief statement explaining the need for the stay, discussing the effect of the stay on the ability of the circuit court to plan for the child and on the best interests of the child. This rule shall not preclude any motion to the circuit court for a stay which includes a brief statement of the issues previously set forth.

Rule 51. Multidisciplinary treatment teams.

(a) *Convening of multidisciplinary treatment teams.* — Within thirty (30) days after the ~~civil protection~~ petition is filed, the court shall cause to be convened a meeting of a ~~multi-disciplinary~~ multidisciplinary treatment team assigned to the case, said ~~multi-disciplinary~~ multidisciplinary treatment team to include those members mandated pursuant to W. Va. Code § ~~49-5D-3~~ 49-4-405, providers of services to the child and/or family, and persons entitled to notice and the right to be heard.

(b) *Access to and confidentiality of information.* — The multidisciplinary investigative team created pursuant to W. Va. Code § ~~49-5D-2~~ 49-4-402, and the multidisciplinary treatment team created pursuant to W. Va. Code § ~~49-5D-3~~ 49-4-403 and the ~~multidisciplinary~~ community oversight team created pursuant to W. Va. Code § ~~49-1-3(7)~~ 49-1-207 shall be afforded access to information in the possession of the Department and other agencies and the Department and other offices shall cooperate in the sharing of information as may be provided by W. Va. Code §§ ~~49-5D-2(d), 49-5D-3(d), 49-5D-6, 49-7-1~~ 49-4-402 and 49-5-101, and any other relevant provisions of law. Any ~~multi-disciplinary~~ multidisciplinary team member who acquires confidential information shall not disclose such information except as provided by statute.

(c) *Responsibilities.* — The multidisciplinary treatment team shall submit written reports to the court as required by these rules or by the court, shall meet with the court at least every three months until permanency is achieved for the child, and the case is dismissed from the docket; shall be available for status conferences and hearings as required by the court; and shall not be abrogated by an adoption review committee or other administrative process of the Department.

(d) *Scope of this rule.* — This rule is to be construed broadly to effectuate cooperation and communication between all service providers, parties, counsel, persons entitled to notice and the right to be heard, and the court.

Rule 52. Court-appointed special advocate (CASA) representative.

(a) *Appointment of court-appointed special advocate representative.* — Where a court-appointed special advocate program which is in good standing as a member of the National CASA Association and the West Virginia CASA Association is in place, the court may, after the filing of a civil petition, appoint a CASA representative to further the best interests of the child until further order of the court or until permanent placement of the child is achieved.

(b) *Duties of CASA representative.* — A CASA representative is to be appointed primarily in ~~civil protection~~ proceedings involving child abuse and/or neglect. Duties of a CASA representative include an independent gathering of information through interviews and review of records; facilitating prompt and thorough review of the case; protecting and promoting the best interests of the child; follow-up and monitoring of court orders and case plans; making a written report to the court with recommendations concerning the child's welfare; and negotiating and advocating on behalf of the child.

(c) *Access to information.* — The court may enter an order granting the CASA representative access to court records and confidential records of state, county, local agencies, and service providers, or the CASA representative may obtain a waiver for the release of such information from the parties as provided by W. Va. Code § 49-7-1 ~~49-5-101~~, or in accordance with other law. If such an order is entered or such a waiver is obtained, the CASA representative shall be considered a person entitled to notice and the opportunity to be heard and shall be given notice of pleadings, court orders, hearings, and conferences and shall be allowed to attend proceedings to the extent allowed by the court. The CASA representative shall not disclose any confidential information he or she obtains except as authorized by statute.

(d) *Notification of hearings.* — The CASA representative shall be notified of all hearings and changes in hearings, all status conferences, all treatment multidisciplinary team meetings, and all Department administrative reviews.

(e) *Court orders.* — The CASA representative shall receive copies of all court orders in the case to which he or she is appointed.

(f) *Termination.* — The CASA representative shall stay involved in the case until further order of the court or permanent placement of the child is achieved. The CASA representative shall have access to information in the selection process of adoptive parents, legal guardians or

permanent foster care parents. The CASA representative also shall monitor and advocate for services for the permanent placement family until the final order is entered.

(g) *Continued duties of the child's attorney.* — The appointment of a CASA representative shall not in any way abrogate the duties and responsibilities imposed by law on the attorney for the child. The duties and responsibilities of a child's guardian ad litem shall continue until such child has a permanent placement, and the guardian ad litem shall not be relieved of his responsibilities until such permanent placement has been achieved.

Rule 53. Case status reporting.

To effectuate the purpose of the rules and to assist the court in complying with the duty to monitor the progress of each abuse and neglect case from filing through the child's permanent placement, the court shall promptly enter required data into the electronic child abuse and neglect database managed by the Administrator of the Supreme Court of Appeals for each abuse/neglect case commencing from the filing of the case until the child involved in the case is situated by way of unconditional permanent return to parent(s), or other permanent placement ratified by court order, or by emancipation.

Rule 54. Transitioning adults.

These rules of procedure pertaining to case reviews and permanency hearings apply to any "transitioning adult" as defined by W.Va. Code § ~~49-2B-2(x)~~ 49-1-202.

A True Copy

Attest: //s// Rory L. Perry II
Clerk of Court

