

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on January 28, 2021, the following order was made and entered:

**RE: PROPOSED AMENDMENTS TO RULE 6 OF THE WEST VIRGINIA RULES OF PROCEDURE FOR CHILD ABUSE AND NEGLECT PROCEEDINGS, Docket No. 19-RULES-10**

On May 22, 2019, the West Virginia Judicial Association presented to the Court a proposed amendment to Rule 6 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. The proposed amendment is as follows (strike-throughs indicate language that would be stricken, and underscoring indicates language that would be new):

**Rule 6. Maintaining Case on Court Docket**

Each 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, and all issues relative to said 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~~ In the event that the circuit court does not terminate the parental and/or custodial rights of a natural parent, but enters an appropriate order as to parenting time and/or child support, then any subsequent request for a change in parenting time, visitation and/or child support shall be filed in the family court of competent jurisdiction, unless the grounds for modification allege abuse and/or neglect as a basis for the change, then the matter shall proceed in compliance with Rule 3a accordance with these Rules.

The Court approved a public comment period. Seven comments were received. The West Virginia Family Court Association submitted a comment asserting that the amendments should not be adopted, as they are contrary to the law and would “endanger the safety and welfare of our most vulnerable children, those already involved in abuse and neglect proceedings.” The West Virginia Judicial Association submitted a response averring, inter alia, that the amendments would

return modifications of child visitation, child custody, and child support to family courts when the basis for the modification is a change of circumstances—not abuse or neglect of children.

Upon consideration and review, the Court is of the opinion to, and does hereby, refuse to adopt the amendments. However, the Judicial Association and Family Court Judicial Association are encouraged to work together to consider potential improvements to the procedure set forth in Rule 6 that would maintain child safety and allow for efficiency and fairness for both courts and litigants.

A True Copy

Attest: /s/Edythe Nash Gaiser  
Clerk of Court

