

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on April 24, 2025, the following order was made and entered:

**RE: PROVISIONAL ADOPTION AND REQUEST FOR PUBLIC COMMENT
ON PROPOSED AMENDMENTS TO RULES 3 AND 15 OF THE RULES
OF PROCEDURE FOR CHILD ABUSE AND NEGLECT PROCEEDINGS**

Under Article VIII, §§ 1 and 3 of the West Virginia Constitution, the Court has jurisdiction to promulgate court rules applicable to the courts of this State. By that authority, the Court has considered proposed amendments to Rules 3 and 15 of the Rules of Procedure for Child Abuse and Neglect Proceedings.

Upon consideration and review, the Court is of the opinion that the following amendments to Rules 3 and 15 of the Rules of Procedure for Child Abuse and Neglect Proceedings should be, and are, provisionally approved **effective May 9, 2025**. The Court further orders the amendments to be published for a period of public comment for 30 days. Comments may be filed in writing with the office of the clerk on or before May 26, 2025.

The proposed amendments to Rules 3 and 15 of the Rules of Procedure for Child Abuse and Neglect Proceedings are set forth below. Deletions are indicated by strike-through and additions by underlining.

Rules of Procedure for Child Abuse and Neglect Proceedings

Rule 3. Definitions.

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(q) “**Visitation**” shall mean supervised or unsupervised contact; telephone or video calls; messaging; letters; email; or other communication consistent with the child’s best interests.

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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 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, (footnote 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 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.~~

(a) Visitation before final disposition

(1) If at any time the circuit court orders a child removed from the custody of his or her parent(s), guardian(s), or custodian(s), and places the child in the custody of the Department, or of some other responsible person, the court may make provisions for reasonable visitation between the parent(s) or other individual and the child during the pendency of the case if such visitation:

- (A) is consistent with the child's wellbeing and best interests; and
- (B) will not interfere with the child's case plan.

(2) Whenever possible, the court must make provisions for reasonable visitation between siblings who are not placed together unless the court determines it is not in the best interests of either the child or their sibling(s).

(3) The court shall assure that any visitation occurs in a safe place suitable for visitation, taking into account the child's age and condition.

(b) Visitation after final disposition

(1) If parental rights are not terminated, visitation may be ordered consistent with Rule 6.

(2) The guardian ad litem or any party may move, orally or in writing, for post-termination visitation at the dispositional hearing or at any time prior to the entry of the final dispositional order. After entry of the final dispositional order, the court may permit the

motion upon good cause shown. Provided, that the court may not consider a motion filed by a person whose rights have been terminated after ten days have passed from the entry of the final dispositional order terminating their rights.

(A) The court may grant post-termination visitation only if it finds that such visitation is in the child's best interests, taking into consideration:

i. The guardian ad litem's oral or written recommendation on whether post-termination visitation is in the child's best interests,

ii. If the child is of sufficient age or maturity, whether the child wishes to have visitation; and

iii. Any other relevant evidence, including, but not limited to, the nature of the abuse and/or neglect that prompted termination of rights and the existence of a bond.

(B) Whether granting or denying the motion for post-termination visitation, the court must enter an order containing its ruling on the motion and supportive findings sufficient to permit appellate review.

(C) If granting the motion for post-termination visitation, the court may impose terms or limitations to visitation consistent with the child's best interests, provided that any terms or limitations are incorporated into the order.

(3) Visitation between the child and their siblings shall continue, and a plan for regular contact between siblings, where they are not placed together, shall be incorporated into the permanency plan for the child whenever possible, unless the court finds it is not in the best interest of either the child or their sibling(s).

(c) Any 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 of West Virginia.

(d) Any order entered under this rule may be modified as set forth under Rule 6.

(e) This rule is intended to neither increase nor decrease any rights of the grandparents as set forth in West Virginia Code §§ 49-4-101 through 49-4-610 and 48-10-101 through 48-10-1201.

A True Copy

Attest: /s/ C. Casey Forbes
Clerk of Court

