

APPEALS

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THE RIGHT TO APPEAL

“The court to which appeals may be taken from **final orders** or decrees of the youth court shall be the Supreme Court of Mississippi....”

Miss. Code Ann. § 43-21-651(1)

THE RIGHT TO APPEAL

“Appeals from final orders or decrees of the court shall be pursuant to the Mississippi Rules of Appellate Procedures.”

U.R.Y.C.P. 37

THE RIGHT TO AN EXPEDITED APPEAL

“Normally, upon motion the Supreme Court will enter an order expediting a case where preference is granted by statute. The statutes grant preference in certain civil cases, including ... in appeals from Youth Court, Miss. Code Ann. § 43-21-651 (1972).” M.R.A.P. 23, cmt.

***See also* Miss. Code Ann. § 43-21-651(3) (“Appeals from the youth court shall be preference cases in the Supreme Court.”).**

SUPERSEDEAS

“...If appellant desires to appeal with supersedeas, the matter first shall be presented to the youth court. If refused, the youth court shall forthwith issue a written order stating the reasons for the denial, which order shall be subject to review by the Supreme Court.” Miss. Code Ann. § 43-21-651(2).

THE RIGHT TO APPOINTED APPELLATE COUNSEL

The Indigent Appeals Division (IAD) “shall provide representation on appeal....” Miss. Code Ann. § 99-40-1(1).

“At the sole discretion of the State Defender, the [Indigent Appeals Division] may ... represent **indigent juveniles adjudicated delinquent** on appeals from a county court or chancery court to the Mississippi Supreme Court or the Mississippi Court of Appeals.” Miss. Code Ann. § 99-40-1(2).

2 WAYS TO HAVE THE INDIGENT APPEALS DIVISION (IAD) HANDLE THE APPEAL

First: File a motion to withdraw in the Youth Court, and ask the Youth Court to appoint the IAD.

Second: Perfect the appeal, and then file a motion to withdraw in the appellate court.

PERFECTING THE APPEAL (NOTICE OF APPEAL)

“In any case wherein an appeal is desired, written notice of intention to appeal shall be filed with the **youth court clerk** within the time ... otherwise required for appeals to the Supreme Court.”

Miss. Code Ann. § 43-21-651(1)

PERFECTING THE APPEAL (NOTICE OF APPEAL)

“[T]he notice of appeal ... shall be filed with the clerk of the **trial court** within **30 days** after the date of entry of the judgment or order appealed from.”

M.R.A.P. 4(a)

PERFECTING THE APPEAL (DESIGNATION OF THE RECORD)

“Within **seven (7) days** after filing the notice of appeal, the appellant shall file with **the clerk of the trial court** and serve both on the court reporter or reporters and on the appellee a written designation describing those parts of the record necessary for the appeal.”

M.R.A.P. 10(b)(1).

APPEALING *IN FORMA PAUPERIS*

“A defendant in a criminal case in a trial court who desires to proceed on appeal *in forma pauperis* shall file in the trial court a motion for leave so to proceed, together with an affidavit showing the defendant’s inability to pay fees and costs. If the motion is granted, the defendant may so proceed without further application to the Supreme Court and without prepayment of fees or costs in either court....”

M.R.A.P. 6(a)(1).

APPEALING *IN FORMA PAUPERIS*

“Notwithstanding the provisions of Rule 6(a)(1), a party who has been permitted to proceed *in forma pauperis* in the trial court may proceed on appeal *in forma pauperis* without further authorization unless, before or after the appeal is filed, the trial court shall certify that the party is no longer indigent and is not otherwise entitled to proceed *in forma pauperis*....”

M.R.A.P. 6(a)(2).

APPEALING *IN FORMA PAUPERIS*

“...Where an appeal is taken to the Supreme Court *in forma pauperis*, the certification of compliance required by Rule 11(b)(1) shall indicate that the appeal is taken *in forma pauperis*.”

M.R.A.P. 6(a)(2).

PERFECTING THE APPEAL (CERTIFICATE OF COMPLIANCE)

Example:

Undersigned counsel for _____, hereby certifies compliance with M.R.A.P. 11(b). This appeal is taken *in forma pauperis*. This Court has previously determined that _____ is indigent and entitled to appointed counsel, see Order Appointing Counsel, *attached as Ex. A*, and has made no subsequent finding that he is no longer indigent. Thus, _____ is permitted to proceed on appeal *in forma pauperis* without further authorization, see M.R.A.P. 6(a)(2), and is not required to submit a cost estimate or deposit.”

ADDITIONAL GUIDANCE

Instructions and sample motions are available on the IAD website:

http://www.ospd.ms.gov/Indigent_AppealsNOV2016.html

Or call IAD Director George Holmes at 601-576-4290.

THE DUTY TO ADVISE (RULES)

“[I]f a lawyer handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, **the lawyer should advise the client of the possibility of appeal** before relinquishing responsibility for the matter.”

Miss. R. Prof. Resp. 1.3, Cmnt.

THE DUTY TO ADVISE (RULES)

“Once the client has been adjudicated and a final order entered, **counsel must advise the client of the right to appeal.** The decision regarding whether to appeal ultimately belongs to the client.”

National Juvenile Defense Standards (NJDS), 7.2 (Disclose the Right to Appeal)

THE DUTY TO ADVISE (RULES)

a. Counsel must inform the client of the steps necessary to preserve the right of appeal, the process of appealing, and the potential consequences of an appeal; and

b. Counsel must determine whether the client wants to exercise the right to appeal and explain whether counsel intends to represent the client on appeal.

NJDS Standard 7.2 Cont.

THE DUTY TO ADVISE (CONSTITUTION)

“We ... hold that counsel has a **constitutionally imposed duty to consult with the defendant about an appeal** when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000).

THE IMPORTANCE OF APPEALS

Appeals serve *at least* three essential functions:

- (1) Correction of legal errors
- (2) Law-making
- (3) Ensuring uniformity in the application of the law

THE IMPORTANCE OF **YOUTH COURT** APPEALS

Appeals are especially important in Youth Court cases because they push otherwise secretive proceedings into the light.

THE IMPORTANCE OF **YOUTH COURT** APPEALS

Juvenile detention facilities and Youth Court probation can be just as awful as adult prisons and probation.

THE IMPORTANCE OF **YOUTH COURT** APPEALS

There are collateral consequences of delinquency adjudications that can extend into adulthood. (See, e.g., Sex Offender Registration).

THE IMPORTANCE OF **YOUTH COURT** APPEALS

Children are fairness fanatics

“Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.” *In re Gault*, 387 U.S. 1, 26 (1967)

THE IMPORTANCE OF **YOUTH COURT** APPEALS

The appellate process provides a child with an opportunity to at least fight for fairness and justice.

THE NUMBERS

A recent “study revealed that juvenile delinquency appeals are taken, on average, at a rate of **5.1 per 1,000 cases** where a juvenile was adjudicated delinquent.”

Megan Annitto, 66 U. Miami L. Rev. 671, 716 (2012)

THE NUMBERS

By contrast, “[t]he largest study documenting the rate of criminal appeals taken found that **16% of federal convictions were appealed. At the state level, estimates are higher....**”

Megan Annitto, 66 U. Miami L. Rev. 671, 716 (2012)

**What are some of the
obstacles to zealous
appellate advocacy in
juvenile cases in your
jurisdiction?**

**What are some potential
appellate issues you see in
your cases?**

MAKE A RECORD

File motions (to suppress, dismiss, etc).

Have hearings/get rulings on those motions.

Make objections.

MAKE A RECORD

“In all hearings, except detention and shelter hearings under Section 43-21-309, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.”

Miss. Code Ann. 43-21-203(7)

In re J.P.

IN RE J.P., 151 SO.3D 204 (MISS. 2014)

“The State's interpretation of the 2012 version of Section 43-21-605 is incorrect. For a youth court to ‘commit’ a child to a detention facility, that child first must be adjudicated delinquent. That alone is sufficient to reverse the youth court's assessment of costs against D.O. and R.P. **However, the proceedings below so violated Mississippi's Youth Court Law, and, consequently, D.O. and R.P.'s right to due process, that we are compelled to elaborate on those violations, and how those violations in and of themselves would be sufficient grounds to reverse the assessment of costs.**”

Id. at 214.

***IN RE J.P.*, 151 SO.3D 204 (MISS. 2014)**

“J.P. spent 103 days in the Pike County Juvenile Detention Facility. Section 43-21-605 forbids the confinement of delinquents in a detention facility for more than ninety days.” *Id.*

IN RE J.P., 151 SO.3D 204 (MISS. 2014)

“Section 43-21-451 requires that a petition alleging delinquent conduct be filed within *five* days of a detention hearing. The petition against J.P. was filed *forty-eight* days after his detention hearing.” *Id.*

IN RE J.P., 151 SO.3D 204 (MISS. 2014)

“Section 43-21-551 requires an adjudicatory hearing ‘not later than twenty-one (21) days after the child is first detained by the youth court....’ Miss.Code Ann. § 43-21-551 (Rev. 2009). The hearing may be postponed, but only upon motion of the child, or if process cannot be completed, or if a material witness is unavailable. *Id.* Here, the court never held an adjudicatory hearing, despite J.P.'s being detained for a total of 133 days....

***IN RE J.P.*, 151 SO.3D 204 (MISS. 2014)**

“...When the court postponed J.P.’s adjudicatory hearing on August 15, it did so on its own motion and merely stated that the hearing was postponed ‘for good cause shown.’ After twenty-one days from the date of J.P.’s detainment, the youth court was without authority to hold him in detention.” *Id.*

IN RE J.P., 151 SO.3D 204 (MISS. 2014)

“Additionally, petitions alleging delinquent behavior must ‘set forth plainly and concisely and with particularity ... a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a delinquent child....’ Miss.Code Ann. § 43-21-455(1)(c) (Rev. 2009)....”

IN RE J.P., 151 SO.3D 204 (MISS. 2014)

“...The law also requires that, in the case of a child alleged to be delinquent, that the petition ‘recite factual allegations with the *same particularity required in a criminal indictment....*’ Miss.Code Ann. § 43-21-455(4) (Rev. 2009) (emphasis added)....”

***IN RE J.P.*, 151 SO.3D 204 (MISS. 2014)**

“...Not a single fact was alleged to support the charge. Clearly, were this a criminal indictment it would fall woefully short of the particularity required for such a formal and serious document. The complete failure to provide adequate notice of the charges against J.P. violated the Due Process Clauses of the United States and Mississippi Constitutions.” *Id.* at 214-15.

***IN RE J.P.*, 151 SO.3D 204 (MISS. 2014)**

“...J.P.'s petition stated in its entirety: ‘That on or about 06/21/2012, in JEFFERSON DAVIS COUNTY, MISSISSIPPI, [J.P.] did purposefully, knowingly, and unlawfully commit the act of CONTEMPT OF COURT in violation of § 43-21-153 of the Mississippi Code of 1972, Annotated against the peace and dignity of the State of Mississippi....’”

***IN RE J.P.*, 151 SO.3D 204 (MISS. 2014)**

“Making matters worse, no transcript was made for several of the proceedings in 2012.” *Id.* at 215

***IN RE J.P.*, 151 SO.3D 204 (MISS. 2014)**

“In almost every way, the proceedings (or lack thereof) against J.P. were constitutionally and procedurally infirm....”

***Id.* at 216**

THE END