

Serial: 154535

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99002-SCT

IN RE: MISSISSIPPI RULES OF EVIDENCE

ORDER

This matter is before the Court en banc on the Motion to Amend Certain Rules of the Mississippi Rules of Evidence filed by the Supreme Court Advisory Committee on Rules. Having considered the matter, the Court finds that the amendment of the Comment to Rule 617 as set forth in Exhibit "A" will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the petition is hereby granted to the extent that the Comment to Rule 617 of the Mississippi Rules of Evidence is amended as set forth in Exhibit "A" hereto. This amendment is effective on July 1, 2009.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forward a true certified copy to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 20th day of April, 2009.

/s/ George C. Carlson, Jr.

GEORGE C. CARLSON, JR., PRESIDING JUSTICE
FOR THE COURT

TO GRANT: ALL JUSTICES.

Exhibit A

**Rule 617. Use of Closed- Circuit Television
to Show Child's Testimony.**

(a) Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) years, that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her be taken outside of the courtroom and shown in the courtroom by means of closed-circuit television upon a finding that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court and, in the case of a criminal prosecution, if compelled to testify in the presence of the accused.

(b) The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, the prosecuting attorney, or any party to the case. In addition, the court may act upon its own motion.

(c) Upon stipulation of the parties, the court may appoint a person, who is qualified as an expert in the field of child sexual abuse and who has dealt with the child in a therapeutic setting concerning the offense or act, to aid in formulating methods of questioning the child and to assist the court in interpreting the answers of the child.

(d) Closed-circuit television testimony may be taken by any method not inconsistent with the Confrontation Clauses of the Constitution of the United States and of the State of Mississippi, the Mississippi Rules of Civil Procedure, the Mississippi Uniform Criminal Rules of Circuit Court Practice, and these rules. In the case of a criminal prosecution, after a determination that the defendant's presence would cause a substantial likelihood of serious traumatic emotional or mental distress to the child, the trial court may exclude the defendant from the room where the testimony is taken. In any such case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant, the court and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

(e) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this rule.

(f) All parties must be represented by counsel at any taking of any testimony under this rule.

(g) This rule does not preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

[Adopted effective March 27, 1991]

Comment

This rule provides an exceptional procedure for the taking of testimony from children said to have been the victims of sexual abuse. If this rule is applied in a criminal case, the rights of the defendant under the Confrontation Clauses of Federal and State Constitutions must be respected. *Idaho v. Wright*, 497 U.S. 805, 110 S.Ct. 3139, 111 L.Ed.2d 638 (1990); *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990); *Coy v. Iowa*, 487 U.S. 1012, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988).

[Comment adopted effective March 27, 1991; amended effective July 1, 2009 to update citations]