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HOSEA HINES

VS.

STATE OF MISSISSIPPI

APPELLANT

CAUSE NO. 2006-CA-02107

APPELLEE

**BRIEF OF APPELLANT
HOSEA HINES**

**APPEAL FROM THE YOUTH COURT OF
CITY OF PEARL, MISSISSIPPI**

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HOSEA HINES**

IN THE SUPREME COURT OF MISSISSIPPI

HOSEA HINES

APPELLANT

VS.

CAUSE NO. 2006-CA-02107

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for Appellant Hosea Hines certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

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(3) Honorable John Shirley
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Youth Court Judge

(4) Jim Hood, Attorney General
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REV. HOSEA HINES, APPELLANT

By: *Lisa M. Ross*
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Attorney for Rev. Hosea Hines

REQUEST FOR ORAL ARGUMENT

COMES NOW, the Appellant, Hosea Hines, by and through undersigned counsel, and files this his request for oral argument. Oral argument would be beneficial to the Court's understanding of the facts as they apply to the law on the issues raised in this appeal.

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STATEMENT OF THE ISSUES

1. **WHETHER A YOUTH COURT JUDGE CAN COMPEL A NON-PARTY'S ATTENDANCE IN COURT FOR A REVIEW/SHOW CAUSE HEARING IN THE ABSENCE OF A WRITTEN ORDER DULY SERVED ON THE PERSON WHOSE PRESENCE IS COMMANDED**
2. **WHETHER A YOUTH COURT JUDGE ABUSES HIS DISCRETION WHEN HE DENIES A NON-PARTY'S REQUEST TO HOLD ANY CONTEMPT PROCEEDINGS AGAINST THE NON-PARTY IN OPEN COURT WHEN THE CONTEMPT MATTER TO BE TRIED DOES NOT REQUIRE THAT ANY CONFIDENTIAL MATTERS PERTAINING TO YOUTHS BE DIVULGED**
3. **WHETHER A YOUTH COURT JUDGE ABUSES HIS DISCRETION WHEN THE YOUTH COURT JUDGE PRESIDES OVER A CONSTRUCTIVE CONTEMPT MATTER**
4. **WHETHER THE YOUTH COURT'S OCTOBER 31, 2006 ORDER BARRED REV. HOSEA HINES FROM COMMUNICATING WITH HIS CHURCH MEMBERS WHO ARE UNDER THE JURISDICTION OF THE YOUTH COURT**
5. **WHETHER THE YOUTH COURT COULD BAR REV. HINES AND HIS ATTORNEYS FROM DISCUSSING THE CONTEMPT PROCEEDINGS WHERE NO MATTERS PERTAINING TO MINORS WERE DISCUSSED**

PROCEDURAL HISTORY

This is a case of homemade justice served by Pearl Municipal/Youth Court Judge John Shirley (hereinafter "Judge Shirley"). Judge Shirley found Rev. Hosea Hines in "civil" contempt on December 12, 2006 for failing to appear in court on November 14, 2006. (T. 60, l. 1-4), (C.P. 25). Judge Shirley made this finding in the absence of any showing that Judge Shirley ever entered an order commanding Rev. Hines' attendance and/or provided Hines notice of that Order pursuant to Miss.R.Civ.P., Rule 81. (T. 26, 1.15-17).

In the case *sub judice*, the record shows that Judge Shirley in the absence of a motion and/or any court proceeding entered a No Contact Order against Rev. Hines on November 8, 2006. (C.P. 12). Judge Shirley stated that the No Contact Order “may be served on Rev. Hines.” (C. P. 12). The November 8, 2006 Order did not contain any language commanding Rev. Hines’ presence in court on November 14, 2006. (C.P. 13).

When Rev. Hines did not appear in Court on November 14, 2006, Judge Shirley entered an Order stating in part, “Hosea Hines did not appear as ordered and he shall be arrested to show cause why he should not be held in contempt for disobeying a court order dated October 31, 2006.” (C.P. 13). On November 30, 2006, Judge Shirley entered an Order directing Rev. Hines to appear to show in Pearl Youth Court and “show cause why he should not be held in contempt for violating the court order dated October 31, 2006 by discussing issues with the children after being present in the courtroom when the Judge ordered that no one except the GAL, DHS, law enforcement and CAC shall discuss issues with the children.” (C.P. 15).

On December 4, 2006, Pearl Prosecutor Jason Zebert filed a Motion to Contempt. Zebert stated “[t]hat heretofore, on the 31st day of October, 2006, this Court issued an Order restricting discussion of the pending case with the children to law enforcement, DHS, GAL and CAC which HOSEA HINES has ignored and violated. That heretofore, on the 8th day of November, 2006, this Court issued a No Contact Order in which HOSEA HINES has ignored and violated. Respondent has further willfully and contemptuously ignored the Order of this Court by failing to appear as ordered for a prior review/show cause hearing.” (C.P. 16).

On December 5, 2006, Rev. Hines appeared before the Court with his counsel. (T. p. 3 l. 7-17) Rev. Hines objected to the court's jurisdiction over him as the Youth Court's November 8, 2006 Order did not contain any language compelling his attendance in court on November 14, 2006 and he was not served with an Order compelling his attendance in court. (T. p. 8, l. 5-9).

Before the hearing commenced on December 12, 2006, Zebert informed the Court that the State would not be proceeding on the charges that Rev. Hines "ignored and violated a court order issued by this court on the 31st day of October, 2006" and "ignored and violated a court order issued by this court on the 8th day of November, 2006." (T. p. 22). The State elected to proceed only on the charge that Rev. Hines ignored a court order by failing to appear as ordered for a prior review/show cause hearing. (T. p. 22, l. 21-26).

Zebert announced to the Court that he would be calling one witness for the purpose of showing that Rev. Hines was orally informed to be present in Court on November 12, 2006. (T. p. 37, l. 9-15). Rev. Hines requested that the contempt hearing be opened to the public. (T. p. 37, l. 20-27). Judge Shirley denied the motion. (T. p. 38, l. 5-6).

After hearing testimony from Thompson, the only witness called by the State, Judge Shirley found Rev. Hines guilty of "civil" contempt and ordered him to pay a \$500.00 fine and to serve up to 90 days in jail. (T.p. 60, l. 1-4). Judge Shirley ordered that Rev. Hines file an Appeals bond 24 hours after the hearing or face jail. Rev. Hines posted a bond of \$1,000.00 on December 13, 2006 and perfected this appeal.

STATEMENT OF THE CASE

On October 31, 2006, Rev. Hosea Hines, pastor of College Hill Baptist Church, attended a shelter hearing in Pearl Youth Court. (T.p. 7, l. 3-11). Also present at the shelter hearing was three College Hill church members, a 15-year-old boy, his mother and stepfather. (C.P. 9). The shelter hearing commenced on the heels of a report to a school counselor by the 15-year-old boy of improper sexual conduct by his stepfather. (C.P. 8). At the end of the October 31, 2006 shelter hearing, Judge Shirley ordered that “[n]o one except that GAL, DHS, law enforcement and CAC shall discuss issues with the children.” (C.P. 9). Judge Shirley specifically ordered the stepfather of the minor children not to have any contact with them. (C.P. 9).

The No Contact Order entered against the stepfather would not be the only No Contact Order Judge Shirley would issue in this case. On November 8, 2006, Judge Shirley entered a no-contact Order barring Rev. Hines from having any contact with the minor children. (T. p. 43, l. 14-15). Judge Shirley in a November 8, 2006 Order, which is not stamped file, came “when the detective called me and claimed that Mr. Hines allegedly violated the no contact order. It was on the premises that it was an emergency order requesting protection for the children, and I granted an emergency no contact order.” (C. P. 23) (T. p. 5, l. 6-26).

At the December 12, 2006 hearing, Thompson testified that he contacted Rev. Hines by telephone to advise him of the November 8, 2006 No Contact Order. (T. p. 43, l. 14-27). Thompson says he “contacted Reverend Hines by phone to inform him of such so the contact would not continue, at which time he informed me that he was in Texas, wanted to know if a third party could pick up a copy of that no contact order. And I

explained to him, no, it had to be picked up by him or it had to be served on him, which him being in Texas, probably would not happen. But he could pick up a copy out here, and the judge said that you need to be in court on Tuesday so that can be explained to you. And I asked him twice: Do you understand to be in court on Tuesday so this can be explained by the judge in Pearl, Judge Shirley. He said yes, and I got off the phone.” (T. p. 43, l. 14-27). ”

Thompson testified that the Court gave him instructions to pass along to Rev. Hines. (T. p. 44, l. 7-9). The Court’s November 8, 2006 Order did not state that Rev. Hines must appear in court on November 14, 2006. (C.P. 12). The November 8, 2006 Order stated “that Hosea Hines may be served with a copy of this order.” (C.P. 12). Thompson testified that he did not provide a copy of the November 8, 2006 Order. (T. l. 46, l. 25-29). In fact, Thompson never saw or reviewed the written November 8, 2006 Order, which is not stamped filed, prior to his appearance in Court on December 12, 2006. (T. p. 47, l. 1-5). The written No Contact Order was never provided to Thompson. (T. p. 47, l. 22-24). Thompson did not serve a copy of the written November 8, 2006 Order on Rev. Hines. (T. p. 48, l. 11-14). There was no language in the November 8, 2006 Order compelling Rev. Hines to appear before Judge Shirley on November 14, 2006. (T. p. 47, l. 6-9).

Thompson testified that Rev. Hines did not show up for court on November 14, 2006. (T. p. 45, l. 5-7). Thompson testified that he asked the minor children’s mother to telephone Hines before they went into the court room on November 14, 2006 “to keep him from getting in trouble for not being here. So she did call, standing in the hallway, did not receive an answer, and she left a message on his answer machine instructing him

to call or he was supposed to be in court or something. And that's when we come in the courtroom and it went forward from there." (T. p. 44, l. 26-29 and T. p. 45, l. 1-4). Rev. Hines did not appear. (T. p. 45, l. 5-7).

Apparently, upset by Rev. Hosea Hines' absence at the November 14, 2006 hearing, Judge Shirley entered an Order which provided in part that "Hosea Hines did not appear as ordered and he shall be arrested to show cause why he should not be held in contempt for disobeying a court order dated October 31, 2006." (C.P. 13. (T. p. 52, l. 10-18).

Thompson called Rev. Hines to tell him about the order that "he shall be arrested." (T. p. 52, l. 13-14) and (C.P. 13). Rev. Hines surrendered to the Pearl Police Department on November 15, 2006. (T. p. 52, l. 16-18). Rev. Hines was booked and released after posting a \$1,000.00 bond. (T. p. 52, l. 16-18) and (C.P. 59-60). Rev. Hines was ordered to appear before in Pearl Municipal Court on November 30, 2006. (C.P. 59-60). When Rev. Hines appeared in Pearl Municipal Court with undersigned counsel and a certified court reporter on November 30, 2006, Judge Shirley *sua sponte* cancelled the hearing.

After Rev. Hines' November 30, 2006 hearing, Judge Shirley presented Rev. Hines with an Order that to this day has not been stamped filed. (C.P. 47). In his November 30, 2006 Order, Judge Shirley stated "Hosea Hines shall appear before the Pearl Youth Court at 8:30 a.m. on the 5th day of December, 2006 and show cause why he should not be held in contempt for violating the court order dated October 31, 2006 by discussing issues with the children after being present in the courtroom when the Judge

ordered that no one except the GAL, DHS, law enforcement and CAC shall discuss issues with the children.” (C. P. 47).

On or about December 4, 2006, Rev. Hines filed a Motion to Recuse. (C. P. 22-24). The Motion to Recuse stated in part “Rev. Hosea Hines also objects to the Honorable John Shirley presiding over this matter on the ground that he was not received notice of the charge against him and has not be summoned to appear before this Court in the manner outlined in Rule 81(d)(2) and contemplated by the Mississippi Supreme Court in *In the Interest of Holmes*.” (C.P. 23).

On the same day, Jason Zebert, prosecutor for Pearl Youth Court, filed a Motion for Contempt. (C. P. 16-17). In his Motion, Zebert stated Rev. Hines should be held in contempt because Rev. Hines ignored and violated the Court’s October 31, 2006 Order, ignored and violated the No Contact Order, and “willfully and contemptuously ignored the Order of this Court by failing to appear as ordered for a prior review/show cause hearing.” (C.P. 16). Rev. Hines was served on December 5, 2006 with a Summons ordering him to appear before the Court on December 12, 2006 for a contempt hearing. (C. P. 28).

At a hearing on December 5, 2006, undersigned counsel called Judge Shirley’s attention to the fact that Rev. Hines had moved for his recusal. (T. p. 5, l. 6-13). Judge Shirley said, “I’ve read your motion; it’s denied.” (T. p. 5, l. 6-13). Judge Shirley claimed “the only basis for that was you allege any *ex parte* conversations. (T. p. 5, l. 17-18). Judge Shirley denied having engaged in *ex parte* conversations. (T. p. 5, l. 6-13). Judge Shirley stated “I’ve had no *ex parte* conversations with anyone in this case. The only conversation I would have had involving this would have been when the detective

called me and claimed that Mr. Hines allegedly violated the no contact order. It was on the premise that it was an emergency order requesting protection for the children, and I granted an emergency no contact order. That is the extent of that.” (T. p. 5, l. 17-26).

Before the hearing commenced on December 12, 2006, Zebert moved to dismiss the allegations that Rev. Hines disobeyed the Court’s October 30, 2006 and November 8, 2006 Order “thus leaving only his failure to show up for court as instructed.” (T. p. 22, l. 21-26). Zebert stated “[a]lthough Reverend Hines did in fact contact the child at least after it was alleged that he was instructed not – that no one was to speak to the child except for the list enumerated by the court, **that the statement by the child was Reverend Hines, being a pastor and checking on a member of the church, and according to the young man, did not discuss any of the case with him.** And although that, arguably, is a technical violation, **the State does not want to attempt to prohibit a pastor from checking on a member of his congregations and ministering to their physical, spiritual and emotional needs that need to be met,** but, at the same time, the State has the duty to make sure that a victim, a witness and the child certainly is protected.” (T. p. 22, l. 4-20).

Rev. Hines did not object to Zebert dropping the first two grounds for contempt. (T. p. 23, l. 2-6). Rev. Hines objected to the Court proceeding on the third ground Zebert cited as the basis for his contempt. (T. p. 24-25). Rev. Hines renewed his Motion for Recusal. (T. p. 27, l. 4-11). Rev. Hines also objected on the grounds that he had not been summoned to appear before the Court on November 14, 2006.

Judge Shirley stated “[b]efore someone is brought to court they need to have notice. It’s clear they need to have notice. You’re referring to Rule 81 of the Mississippi

Rules of Civil Procedure which provides for a summons and for written notice through Rule 81. However, what you've failed to do is read rule number one of the Rules of Civil Procedure. Rule number one of the Rules of Civil Procedure says, these rules govern procedure in circuit court, chancery court and county court. This is not a circuit court, a chancery court, and it is not a county court. He is entitled to notice whether that's oral or written. The motion is denied. And the motion for me to recuse is denied. (T. p. 27, l. 14-27).

Counsel for Rev. Hines requested that the hearing on the contempt be held in open court. (T. p. 37, l. 16-27). Judge Shirley refused to open the contempt hearing to the public as requested by Rev. Hines. (T. p. 38, l. 1-6). Judge Shirley stated "[t]he purpose of the Youth Court Act is to protect the best interest of the children. That's undisputed. This case is going to involve allegations that somebody has either abused or neglected a child, and those allegations arose – came about in the youth court. All youth court proceedings are confidential. Your Motion is denied." (T. p. 37, l. 28-29, p. 38, l. 1-6).

Thompson was the only witness called at the contempt hearing on December 12, 2006. Thompson testified he "contacted Reverend Hines by phone to inform him of such so the contact would not continue, at which time he informed me that he was in Texas, wanted to know if a third party could pick up a copy of that no contact order. And I explained to him, no, it had to be picked up by him or it had to be served on him, which him being in Texas, probably would not happen. But he could pick up a copy out here, and the judge said that you need to be in court on Tuesday so that can be explained to you. And I asked him twice: Do you understand to be in court on Tuesday so this can be

explained by the judge in Pearl, Judge Shirley. He said yes, and I got off the phone.” (T. p. 43, l. 14-27).

After Thompson’s testimony, Judge Shirley held Rev. Hines in contempt. He ordered that Rev. Hines serve up to 90 days in jail and pay a fine of \$500.00. Judge Shirley also ordered Rev. Hines and his counsel not to discuss the contempt proceedings with anyone outside of the courtroom.

On December 19, 2006, Judge Shirley entered a written order. In that Order, Judge Shirley stated in part “[t]his court had and still has legitimate concerns that Hosea Hines was attempting to communicate with the children to assist their stepfather, Lawrence Myers, in his criminal legal defense arising from the alleged sexual abuse of his stepchild. It is in the best interest of children allegedly subjected to sexual abuse that this court enter orders that are designed (a) to prevent any interviewing except by forensic interviewers who interview children without the use of leading or suggestive questions; (b) to protect the child from those who may have a motive to make the child withdraw the accusations; and/or (c) to protect the child from someone who is more concerned about the legal status of the alleged child molester than about the protection of the child. Such orders, since they attempt to ensure that only qualified interviewers communicate with the child about the specific allegations, help ensure that the court has a competent basis for determining the validity of the allegations and also benefits anyone who may be falsely accused. Multiple interviews with a child may result in the child refusing to further discuss the case because the child concludes that the interviewers think the child is lying. The guardian ad litem, DHS, and law enforcement are aware that they are not to discuss allegations with the children until the Children’s Advocacy Center (hereinafter

“CAC” has completed its investigation and has made recommendation’s about the child’s need, if any, for treatment. To allow anyone, even a pastor, to ignore a court order can have catastrophic effects upon the child. If pastors were allowed to ignore court orders, the next legal defense strategy would be for an accused child molester to attempt to have a clergyman interview the child to assist in the accused’s legal defense. Such a strategy, if successful, would be devastating for the mental health of alleged victims of child molestation and would effectively eliminate successful prosecution of alleged child molesters.” (C.P. 52-58).

In addition, Judge Shirley stated in his December 19, 2006 Order, that “[t]he court finds beyond a reasonable doubt that Hosea Hines had actual notice of (a) the order of October 31, 2006, because he was present when the order was announced; (b) the order of November 8, 2006, because he was informed by detective Thompson; and (c) of the order to appear in court on the 14th day of November, 2006, regarding the court order of November 8, 2006, because he was informed by detective Thompson....It is unrefuted that Hosea Hines had notice of all three orders but he simply chose to ignore the court order to appear in youth court on the 14th day of November, 2006.” (C. P. 52-58).

Judge Shirley stated further in his Order that “[t]here is no evidence before this court that Hosea Hines (a) respects the privacy rights of the children; (b) would not use his communication with the children to benefit the legal defense of the alleged perpetrator; and (c) would refrain from attempting to have the child recant his allegations of sexual abuse.”

Moreover, the Order provided, “[t]his Court find Hosea Hines willfully violated the order of the court to appear in youth court on the 14th day of November, 2006, and

such conduct places him in civil contempt. Even though the proof is beyond a reasonable doubt that Hosea Hines willfully disobeyed a court order, this court finds him in civil contempt rather than criminal contempt and any arrest record arising from this proceeding shall be expunged. Even though this court originally order that Hosea Hines shall pay a fine, that order shall be amended to order that Hosea Hines may purge himself of contempt by appearing before this Court and sincerely informing the court that in the future he will follow orders of the court even if he disagrees with any such order. If Hosea Hines has already paid a fine, such fine shall be returned to him upon him purging himself of contempt as just described.”

Judge Shirley also stated in the order that “[i]n the best interest of these children and to protect the privacy of these children, the court further orders that (a) no one except the guardian ad litem for the children, DHS, Pearl law enforcement, the attorney for the children, and CAC shall be allowed to discuss, with the children, anything about this hearing or the allegations of abuse or neglect; (b) Jason Zebert, Michael Guest, Hosea Hines, Catherine Myers, Lisa Ross, Carlton Reeves, and Michael Warren are prohibited from discussing, except with each other, today’s proceeding and any other allegations of abuse or neglect of the children; and (c) the children shall be allowed to go to church wherever their mother chooses but Hosea Hines is prohibited, until further order of the court, from having any direct contact with the children other than the children being allowed to be present during any such service.”

SUMMARY OF THE ARGUMENT

Rev. Hines contends that a youth court judge cannot compel a non-party, like him, to appear in court for a review/show cause hearing without first showing that the youth court judge has issued a written Order commanding the person's presence in court and caused that Order to be docketed and served on the person whose presence is commanded. In addition, Rev. Hines argues that he should not be held to answer to a written Order which contains no language commanding his attendance in Court.

Rev. Hines also submits that the contempt proceeding against him should have been held in open court when the prosecutor revealed that the matter to be tried did not require testimony on any confidential matters pertaining to youth.

More importantly, it is Rev. Hines' position that Judge Shirley abused his discretion in presiding over this constructive criminal contempt matter as Judge Shirley was not fair and impartial.

Judge Shirley's October 31, 2006 Order, as written, did not prohibit Rev. Hines from having contact with his church member as such a reading runs afoul of the First Amendment to the United States Constitution

STANDARD OF REVIEW

This Court carefully examines contempt convictions. *Melvin v. State*, 210 Miss. 132, 48 So.2d 856 (1950). Generally speaking, contempt matters are committed to the substantial discretion of the trial court which, by institutional circumstance and both temporal and visual proximity, is infinitely more competent to decide the matter than an appellate court. *Cumberland v. Cumberland*, 564 So.2d 839, 845 (Miss. 1990). A determination of whether the alleged contempt is either civil or criminal in nature must

first be made. If the contempt is civil, the proper standard utilized for review is the manifest error rule. *Purvis v. Purvis*, 657 So.2d 794, 797 (Miss. 1994). "If the primary purpose of the contempt order is to enforce the rights of private party litigants or enforce compliance with a court order, then the contempt is civil. The contemnor may be jailed or fined for civil contempt; however, the contemnor must be relieved of the penalty when he performs the required act." *Dennis v. Dennis*, 824 So.2d 604, 608 (Miss. 2002).

STATEMENT OF THE ISSUES

1. **WHETHER A YOUTH COURT JUDGE CAN COMPEL A NON-PARTY'S ATTENDANCE IN COURT FOR A REVIEW/SHOW CAUSE HEARING IN THE ABSENCE OF A WRITTEN ORDER DULY SERVED ON THE PERSON WHOSE PRESENCE IS COMMANDED**
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5. **WHETHER THE YOUTH COURT COULD BAR REV. HINES AND HIS ATTORNEYS FROM DISCUSSING THE CONTEMPT PROCEEDINGS WHERE NO MATTERS PERTAINING TO MINORS WERE DISCUSSED**

PROCEDURAL HISTORY

This is a case of homemade justice served by Pearl Municipal/Youth Court Judge John Shirley (hereinafter "Judge Shirley"). Judge Shirley found Rev. Hosea Hines in "civil" contempt on December 12, 2006 for failing to appear in court on November 14, 2006. (T. 60, l. 1-4), (C.P. 25). Judge Shirley made this finding in the absence of any showing that Judge Shirley ever entered an order commanding Rev. Hines' attendance and/or provided Hines notice of that Order pursuant to Miss.R.Civ.P., Rule 81. (T. 26, 1.15-17).

In the case *sub judice*, the record shows that Judge Shirley in the absence of a motion and/or any court proceeding entered a No Contact Order against Rev. Hines on November 8, 2006. (C.P. 12). Judge Shirley stated that the No Contact Order “may be served on Rev. Hines.” (C. P. 12). The November 8, 2006 Order did not contain any language commanding Rev. Hines’ presence in court on November 14, 2006. (C.P. 13).

When Rev. Hines did not appear in Court on November 14, 2006, Judge Shirley entered an Order stating in part, “Hosea Hines did not appear as ordered and he shall be arrested to show cause why he should not be held in contempt for disobeying a court order dated October 31, 2006.” (C.P. 13). On November 30, 2006, Judge Shirley entered an Order directing Rev. Hines to appear to show in Pearl Youth Court and “show cause why he should not be held in contempt for violating the court order dated October 31, 2006 by discussing issues with the children after being present in the courtroom when the Judge ordered that no one except the GAL, DHS, law enforcement and CAC shall discuss issues with the children.” (C.P. 15).

On December 4, 2006, Pearl Prosecutor Jason Zebert filed a Motion to Contempt. Zebert stated “[t]hat heretofore, on the 31st day of October, 2006, this Court issued an Order restricting discussion of the pending case with the children to law enforcement, DHS, GAL and CAC which HOSEA HINES has ignored and violated. That heretofore, on the 8th day of November, 2006, this Court issued a No Contact Order in which HOSEA HINES has ignored and violated. Respondent has further willfully and contemptuously ignored the Order of this Court by failing to appear as ordered for a prior review/show cause hearing.” (C.P. 16).

On December 5, 2006, Rev. Hines appeared before the Court with his counsel. (T. p. 3 l. 7-17) Rev. Hines objected to the court's jurisdiction over him as the Youth Court's November 8, 2006 Order did not contain any language compelling his attendance in court on November 14, 2006 and he was not served with an Order compelling his attendance in court. (T. p. 8, l. 5-9).

Before the hearing commenced on December 12, 2006, Zebert informed the Court that the State would not be proceeding on the charges that Rev. Hines "ignored and violated a court order issued by this court on the 31st day of October, 2006" and "ignored and violated a court order issued by this court on the 8th day of November, 2006." (T. p. 22). The State elected to proceed only on the charge that Rev. Hines ignored a court order by failing to appear as ordered for a prior review/show cause hearing. (T. p. 22, l. 21-26).

Zebert announced to the Court that he would be calling one witness for the purpose of showing that Rev. Hines was orally informed to be present in Court on November 12, 2006. (T. p. 37, l. 9-15). Rev. Hines requested that the contempt hearing be opened to the public. (T. p. 37, l. 20-27). Judge Shirley denied the motion. (T. p. 38, l. 5-6).

After hearing testimony from Thompson, the only witness called by the State, Judge Shirley found Rev. Hines guilty of "civil" contempt and ordered him to pay a \$500.00 fine and to serve up to 90 days in jail. (T.p. 60, l. 1-4). Judge Shirley ordered that Rev. Hines file an Appeals bond 24 hours after the hearing or face jail. Rev. Hines posted a bond of \$1,000.00 on December 13, 2006 and perfected this appeal.

STATEMENT OF THE CASE

On October 31, 2006, Rev. Hosea Hines, pastor of College Hill Baptist Church, attended a shelter hearing in Pearl Youth Court. (T.p. 7, l. 3-11). Also present at the shelter hearing was three College Hill church members, a 15-year-old boy, his mother and stepfather. (C.P. 9). The shelter hearing commenced on the heels of a report to a school counselor by the 15-year-old boy of improper sexual conduct by his stepfather. (C.P. 8). At the end of the October 31, 2006 shelter hearing, Judge Shirley ordered that “[n]o one except that GAL, DHS, law enforcement and CAC shall discuss issues with the children.” (C.P. 9). Judge Shirley specifically ordered the stepfather of the minor children not to have any contact with them. (C.P. 9).

The No Contact Order entered against the stepfather would not be the only No Contact Order Judge Shirley would issue in this case. On November 8, 2006, Judge Shirley entered a no-contact Order barring Rev. Hines from having any contact with the minor children. (T. p. 43, l. 14-15). Judge Shirley in a November 8, 2006 Order, which is not stamped file, came “when the detective called me and claimed that Mr. Hines allegedly violated the no contact order. It was on the premises that it was an emergency order requesting protection for the children, and I granted an emergency no contact order.” (C. P. 23) (T. p. 5, l. 6-26).

At the December 12, 2006 hearing, Thompson testified that he contacted Rev. Hines by telephone to advise him of the November 8, 2006 No Contact Order. (T. p. 43, l. 14-27). Thompson says he “contacted Reverend Hines by phone to inform him of such so the contact would not continue, at which time he informed me that he was in Texas, wanted to know if a third party could pick up a copy of that no contact order. And I

explained to him, no, it had to be picked up by him or it had to be served on him, which him being in Texas, probably would not happen. But he could pick up a copy out here, and the judge said that you need to be in court on Tuesday so that can be explained to you. And I asked him twice: Do you understand to be in court on Tuesday so this can be explained by the judge in Pearl, Judge Shirley. He said yes, and I got off the phone.” (T. p. 43, l. 14-27). ”

Thompson testified that the Court gave him instructions to pass along to Rev. Hines. (T. p. 44, l. 7-9). The Court’s November 8, 2006 Order did not state that Rev. Hines must appear in court on November 14, 2006. (C.P. 12). The November 8, 2006 Order stated “that Hosea Hines may be served with a copy of this order.” (C.P. 12). Thompson testified that he did not provide a copy of the November 8, 2006 Order. (T. l. 46, l. 25-29). In fact, Thompson never saw or reviewed the written November 8, 2006 Order, which is not stamped filed, prior to his appearance in Court on December 12, 2006. (T. p. 47, l. 1-5). The written No Contact Order was never provided to Thompson. (T. p. 47, l. 22-24). Thompson did not serve a copy of the written November 8, 2006 Order on Rev. Hines. (T. p. 48, l. 11-14). There was no language in the November 8, 2006 Order compelling Rev. Hines to appear before Judge Shirley on November 14, 2006. (T. p. 47, l. 6-9).

Thompson testified that Rev. Hines did not show up for court on November 14, 2006. (T. p. 45, l. 5-7). Thompson testified that he asked the minor children’s mother to telephone Hines before they went into the court room on November 14, 2006 “to keep him from getting in trouble for not being here. So she did call, standing in the hallway, did not receive an answer, and she left a message on his answer machine instructing him

to call or he was supposed to be in court or something. And that's when we come in the courtroom and it went forward from there." (T. p. 44, l. 26-29 and T. p. 45, l. 1-4). Rev. Hines did not appear. (T. p. 45, l. 5-7).

Apparently, upset by Rev. Hosea Hines' absence at the November 14, 2006 hearing, Judge Shirley entered an Order which provided in part that "Hosea Hines did not appear as ordered and he shall be arrested to show cause why he should not be held in contempt for disobeying a court order dated October 31, 2006." (C.P. 13. (T. p. 52, l. 10-18).

Thompson called Rev. Hines to tell him about the order that "he shall be arrested." (T. p. 52, l. 13-14) and (C.P. 13). Rev. Hines surrendered to the Pearl Police Department on November 15, 2006. (T. p. 52, l. 16-18). Rev. Hines was booked and released after posting a \$1,000.00 bond. (T. p. 52, l. 16-18) and (C.P. 59-60). Rev. Hines was ordered to appear before in Pearl Municipal Court on November 30, 2006. (C.P. 59-60). When Rev. Hines appeared in Pearl Municipal Court with undersigned counsel and a certified court reporter on November 30, 2006, Judge Shirley *sua sponte* cancelled the hearing.

After Rev. Hines' November 30, 2006 hearing, Judge Shirley presented Rev. Hines with an Order that to this day has not been stamped filed. (C.P. 47). In his November 30, 2006 Order, Judge Shirley stated "Hosea Hines shall appear before the Pearl Youth Court at 8:30 a.m. on the 5th day of December, 2006 and show cause why he should not be held in contempt for violating the court order dated October 31, 2006 by discussing issues with the children after being present in the courtroom when the Judge

ordered that no one except the GAL, DHS, law enforcement and CAC shall discuss issues with the children.” (C. P. 47).

On or about December 4, 2006, Rev. Hines filed a Motion to Recuse. (C. P. 22-24). The Motion to Recuse stated in part “Rev. Hosea Hines also objects to the Honorable John Shirley presiding over this matter on the ground that he was not received notice of the charge against him and has not be summoned to appear before this Court in the manner outlined in Rule 81(d)(2) and contemplated by the Mississippi Supreme Court in *In the Interest of Holmes*.” (C.P. 23).

On the same day, Jason Zebert, prosecutor for Pearl Youth Court, filed a Motion for Contempt. (C. P. 16-17). In his Motion, Zebert stated Rev. Hines should be held in contempt because Rev. Hines ignored and violated the Court’s October 31, 2006 Order, ignored and violated the No Contact Order, and “willfully and contemptuously ignored the Order of this Court by failing to appear as ordered for a prior review/show cause hearing.” (C.P. 16). Rev. Hines was served on December 5, 2006 with a Summons ordering him to appear before the Court on December 12, 2006 for a contempt hearing. (C. P. 28).

At a hearing on December 5, 2006, undersigned counsel called Judge Shirley’s attention to the fact that Rev. Hines had moved for his recusal. (T. p. 5, l. 6-13). Judge Shirley said, “I’ve read your motion; it’s denied.” (T. p. 5, l. 6-13). Judge Shirley claimed “the only basis for that was you allege any *ex parte* conversations. (T. p. 5, l. 17-18). Judge Shirley denied having engaged in *ex parte* conversations. (T. p. 5, l. 6-13). Judge Shirley stated “I’ve had no *ex parte* conversations with anyone in this case. The only conversation I would have had involving this would have been when the detective

called me and claimed that Mr. Hines allegedly violated the no contact order. It was on the premise that it was an emergency order requesting protection for the children, and I granted an emergency no contact order. That is the extent of that.” (T. p. 5, l. 17-26).

Before the hearing commenced on December 12, 2006, Zebert moved to dismiss the allegations that Rev. Hines disobeyed the Court’s October 30, 2006 and November 8, 2006 Order “thus leaving only his failure to show up for court as instructed.” (T. p. 22, l. 21-26). Zebert stated “[a]lthough Reverend Hines did in fact contact the child at least after it was alleged that he was instructed not – that no one was to speak to the child except for the list enumerated by the court, **that the statement by the child was Reverend Hines, being a pastor and checking on a member of the church, and according to the young man, did not discuss any of the case with him.** And although that, arguably, is a technical violation, **the State does not want to attempt to prohibit a pastor from checking on a member of his congregations and ministering to their physical, spiritual and emotional needs that need to be met,** but, at the same time, the State has the duty to make sure that a victim, a witness and the child certainly is protected.” (T. p. 22, l. 4-20).

Rev. Hines did not object to Zebert dropping the first two grounds for contempt. (T. p. 23, l. 2-6). Rev. Hines objected to the Court proceeding on the third ground Zebert cited as the basis for his contempt. (T. p. 24-25). Rev. Hines renewed his Motion for Recusal. (T. p. 27, l.4-11). Rev. Hines also objected on the grounds that he had not been summoned to appear before the Court on November 14, 2006.

Judge Shirley stated “[b]efore someone is brought to court they need to have notice. It’s clear they need to have notice. You’re referring to Rule 81 of the Mississippi

Rules of Civil Procedure which provides for a summons and for written notice through Rule 81. However, what you've failed to do is read rule number one of the Rules of Civil Procedure. Rule number one of the Rules of Civil Procedure says, these rules govern procedure in circuit court, chancery court and county court. This is not a circuit court, a chancery court, and it is not a county court. He is entitled to notice whether that's oral or written. The motion is denied. And the motion for me to recuse is denied. (T. p. 27, l. 14-27).

Counsel for Rev. Hines requested that the hearing on the contempt be held in open court. (T. p. 37, l. 16-27). Judge Shirley refused to open the contempt hearing to the public as requested by Rev. Hines. (T. p. 38, l. 1-6). Judge Shirley stated "[t]he purpose of the Youth Court Act is to protect the best interest of the children. That's undisputed. This case is going to involve allegations that somebody has either abused or neglected a child, and those allegations arose – came about in the youth court. All youth court proceedings are confidential. Your Motion is denied." (T. p. 37, l. 28-29, p. 38, l. 1-6).

Thompson was the only witness called at the contempt hearing on December 12, 2006. Thompson testified he "contacted Reverend Hines by phone to inform him of such so the contact would not continue, at which time he informed me that he was in Texas, wanted to know if a third party could pick up a copy of that no contact order. And I explained to him, no, it had to be picked up by him or it had to be served on him, which him being in Texas, probably would not happen. But he could pick up a copy out here, and the judge said that you need to be in court on Tuesday so that can be explained to you. And I asked him twice: Do you understand to be in court on Tuesday so this can be

explained by the judge in Pearl, Judge Shirley. He said yes, and I got off the phone.” (T. p. 43, l. 14-27).

After Thompson’s testimony, Judge Shirley held Rev. Hines in contempt. He ordered that Rev. Hines serve up to 90 days in jail and pay a fine of \$500.00. Judge Shirley also ordered Rev. Hines and his counsel not to discuss the contempt proceedings with anyone outside of the courtroom.

On December 19, 2006, Judge Shirley entered a written order. In that Order, Judge Shirley stated in part “[t]his court had and still has legitimate concerns that Hosea Hines was attempting to communicate with the children to assist their stepfather, Lawrence Myers, in his criminal legal defense arising from the alleged sexual abuse of his stepchild. It is in the best interest of children allegedly subjected to sexual abuse that this court enter orders that are designed (a) to prevent any interviewing except by forensic interviewers who interview children without the use of leading or suggestive questions; (b) to protect the child from those who may have a motive to make the child withdraw the accusations; and/or (c) to protect the child from someone who is more concerned about the legal status of the alleged child molester than about the protection of the child. Such orders, since they attempt to ensure that only qualified interviewers communicate with the child about the specific allegations, help ensure that the court has a competent basis for determining the validity of the allegations and also benefits anyone who may be falsely accused. Multiple interviews with a child may result in the child refusing to further discuss the case because the child concludes that the interviewers think the child is lying. The guardian ad litem, DHS, and law enforcement are aware that they are not to discuss allegations with the children until the Children’s Advocacy Center (hereinafter

“CAC” has completed its investigation and has made recommendation’s about the child’s need, if any, for treatment. To allow anyone, even a pastor, to ignore a court order can have catastrophic effects upon the child. If pastors were allowed to ignore court orders, the next legal defense strategy would be for an accused child molester to attempt to have a clergyman interview the child to assist in the accused’s legal defense. Such a strategy, if successful, would be devastating for the mental health of alleged victims of child molestation and would effectively eliminate successful prosecution of alleged child molesters.” (C.P. 52-58).

In addition, Judge Shirley stated in his December 19, 2006 Order, that “[t]he court finds beyond a reasonable doubt that Hosea Hines had actual notice of (a) the order of October 31, 2006, because he was present when the order was announced; (b) the order of November 8, 2006, because he was informed by detective Thompson; and (c) of the order to appear in court on the 14th day of November, 2006, regarding the court order of November 8, 2006, because he was informed by detective Thompson....It is unrefuted that Hosea Hines had notice of all three orders but he simply chose to ignore the court order to appear in youth court on the 14th day of November, 2006.” (C. P. 52-58).

Judge Shirley stated further in his Order that “[t]here is no evidence before this court that Hosea Hines (a) respects the privacy rights of the children; (b) would not use his communication with the children to benefit the legal defense of the alleged perpetrator; and (c) would refrain from attempting to have the child recant his allegations of sexual abuse.”

Moreover, the Order provided, “[t]his Court find Hosea Hines willfully violated the order of the court to appear in youth court on the 14th day of November, 2006, and

such conduct places him in civil contempt. Even though the proof is beyond a reasonable doubt that Hoses Hines willfully disobeyed a court order, this court finds him in civil contempt rather than criminal contempt and any arrest record arising from this proceeding shall be expunged. Even though this court originally order that Hosea Hines shall pay a fine, that order shall be amended to order that Hosea Hines may purge himself of contempt by appearing before this Court and sincerely informing the court that in the future he will follow orders of the court even if he disagrees with any such order. If Hosea Hines has already paid a fine, such fine shall be returned to him upon him purging himself of contempt as just described.”

Judge Shirley also stated in the order that “[i]n the best interest of these children and to protect the privacy of these children, the court further orders that (a) no one except the guardian ad litem for the children, DHS, Pearl law enforcement, the attorney for the children, and CAC shall be allowed to discuss, with the children, anything about this hearing or the allegations of abuse or neglect; (b) Jason Zebert, Michael Guest, Hosea Hines, Catherine Myers, Lisa Ross, Carlton Reeves, and Michael Warren are prohibited from discussing, except with each other, today’s proceeding and any other allegations of abuse or neglect of the children; and (c) the children shall be allowed to go to church wherever their mother chooses but Hosea Hines is prohibited, until further order of the court, from having any direct contact with the children other than the children being allowed to be present during any such service.”

SUMMARY OF THE ARGUMENT

Rev. Hines contends that a youth court judge cannot compel a non-party, like him, to appear in court for a review/show cause hearing without first showing that the youth court judge has issued a written Order commanding the person's presence in court and caused that Order to be docketed and served on the person whose presence is commanded. In addition, Rev. Hines argues that he should not be held to answer to a written Order which contains no language commanding his attendance in Court.

Rev. Hines also submits that the contempt proceeding against him should have been held in open court when the prosecutor revealed that the matter to be tried did not require testimony on any confidential matters pertaining to youth.

More importantly, it is Rev. Hines' position that Judge Shirley abused his discretion in presiding over this constructive criminal contempt matter as Judge Shirley was not fair and impartial.

Judge Shirley's October 31, 2006 Order, as written, did not prohibit Rev. Hines from having contact with his church member as such a reading runs afoul of the First Amendment to the United States Constitution

STANDARD OF REVIEW

This Court carefully examines contempt convictions. *Melvin v. State*, 210 Miss. 132, 48 So.2d 856 (1950). Generally speaking, contempt matters are committed to the substantial discretion of the trial court which, by institutional circumstance and both temporal and visual proximity, is infinitely more competent to decide the matter than an appellate court. *Cumberland v. Cumberland*, 564 So.2d 839, 845 (Miss. 1990). A determination of whether the alleged contempt is either civil or criminal in nature must

first be made. If the contempt is civil, the proper standard utilized for review is the manifest error rule. *Purvis v. Purvis*, 657 So.2d 794, 797 (Miss. 1994). “If the primary purpose of the contempt order is to enforce the rights of private party litigants or enforce compliance with a court order, then the contempt is civil. The contemnor may be jailed or fined for civil contempt; however, the contemnor must be relieved of the penalty when he performs the required act.” *Dennis v. Dennis*, 824 So.2d 604, 608 (Miss. 2002).

ARGUMENT

A YOUTH COURT JUDGE CANNOT COMPEL A NON-PARTY'S ATTENDANCE IN COURT FOR A REVIEW/SHOW CAUSE HEARING IN THE ABSENCE OF A WRITTEN ORDER DULY SERVED ON THE PERSON WHOSE PRESENCE IS COMMANDED

Pursuant to Rule 81 of the Mississippi Rules of Civil Procedure, Rev. Hines was entitled to notice of Judge Shirley's No Contact Order as well as the judge's oral order directing him to appear in court on November 14, 2006. Judge Shirley contends that Rev. Hines received reasonable notice: a telephone call from a detective informing Rev. Hines of the No Contact Order and directing Rev. Hines to appear in court. Judge Shirley argues that said notice was sufficient to compel Rev. Hines' attendance because Rule 1 of the Mississippi Rules of Civil Procedure provides that the Rules of Civil Procedure, including Rule 81, do not apply in Youth Court.

Before reaching the issue of whether Rule 81 applies in Youth Court, it is necessary for this Court to clarify how judges speak to parties and non-parties. If this Court countenances Judge Shirley's action, it would open the floodgates for judges to start giving oral orders directing non-parties to appear in court in the absence of due process. To date, this Court has said, "[i]t is fundamental that a court speaks only through its entries spread upon the record and it has been said that it is only safe procedure that such rule be followed by an administrative agency when acting judicially; and where statute provides that a full and complete record of contested proceedings shall be kept and directs that every order or authorization issued or approved by the administrative agency shall be entered on its records it may be said that the agency, like any court, acts and speaks only *through its written orders*." *Hernando Bank v. Davidson*, 250 Miss. 23 (1964), citing 73 C.J.S. Public Administrative Bodies and Procedure § 182,

p. 528. In this case, there is no record of any court proceedings Judge Shirley held before entering the No Contact Order. Without a transcript of the court proceedings, it is impossible for this Court to determine whether Judge Shirley ever gave an oral Order from the bench instructing Thompson to call Rev. Hines to tell him about the No Contact Order and to appear in Court on November 14, 2006. While there is no transcript of the proceedings related to the issuance of the November 8, 2006 Order, this Court is not left without any indication of what Judge Shirley did on November 8, 2006. Judge Shirley issued a No Contact Order. The No Contact Order did not command Rev. Hines to appear in court on November 14, 2006.

In *Davis v. Davis* 829 So.2d 712, 714(9) (Miss. Ct. App. 2002) this Court stated “Before a party may be held in contempt for failure to comply with a judgment, ‘the judgment must be complete within itself .. leaving open no matter or description or designation out of which contention may arise as to its meaning.’” Because there is no language in the November 8, 2006 Order, which is not stamped filed, commanding Rev. Hines’ presence in court on November 14, 2006, this Court should find that find that Rev. Hines cannot be held in violation of the November 8, 2006 Order because the Order was not complete within itself and left open a matter out of which a contention has arisen.

Assuming arguendo that Judge Shirley’s November 8, 2006 Order was complete and left no matter in contention regarding Rev. Hines’ appearance, this Court still would have to reverse this matter because Rev. Hines was not properly served. In contempt proceedings, “complete absence of service of process offends due process and cannot be waived. *Dennis*, 824 So.2d at 609, quoting *Mansour v. Charmax Indus., Inc.*, 680 So.2d 852, 855 (Miss. 1996) (citing *Edward v. James*, 454 So.2d 684, 686 (Miss. 1984).

Judge Shirley insists that Rule 81 has no application in youth court proceedings. Judge Shirley is wrong. This is a contempt proceeding, not a youth court proceeding albeit the contempt arose in youth court. If Judge Shirley calls this contempt proceeding what it is, he would lose the cover he is trying to hold onto to protect his failure to follow the law.

Rule 81 of the Mississippi Rules of Civil Procedure provides in part that the Rules of Civil Procedure apply to all civil proceedings but are subject to limited applicability in proceedings pursuant to the Youth Court Law. Rule 81(d) provides that the special rules of procedure set forth in subpart d applies to contempt actions. Moreover, Rule 81 provides that whenever a statute requires summons or notice by publication, service in accordance with the methods provided in M.R.C.P. 4 shall be taken to satisfy the requirements of the statute. M.R.C.P. 4 provides that upon the filing a complaint, the clerk shall forthwith issue a summons which “shall be dated and signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.”

The Youth Court Act clearly contemplates the issuance of all writs and process. (See, Miss. Code Ann. § 43-21-153). Miss. Code Ann. § 43-21-501 provides in part that “[w]hen a petition has been filed and the date of the hearing has been set by the Youth Court, **the judge or his designee shall order the clerk of the youth court to issue a**

summons to the following to appear personally at such hearing:(d) any other persons the court deems necessary.” *Cortesi v. Washington County Department of Human Services*, 566 So.2d 691, 698 (Miss. 1990). In footnote 8 in *Cortesi*, the Court stated that “Rule 81, Miss.R.Civ.P., provides that the Rules have limited applicability to youth court proceedings. The Rules are enforceable where they don’t conflict with statutorily provided procedure. Id.

In *Hanshaw v. Hanshaw*, 2007 WL 447085 * 3 (Miss. COA) Judge King, made it clear that “[t]he procedure for contempt actions is governed by Rule 81(d) of the Mississippi Rules of Civil Procedure. Contempt actions are triable seven day after service of a Rule 81 summons. M.R.C.P. Rule 81(d)(2). A Rule 81 summons must set out a specific time and place where the defendant is to appear. M.R.C.P. 81(d)(5).”

In *Hanshaw*, the court reversed the chancellor’s judgment because the complaining party did not receive notice pursuant to Rule 81. The *Hanshaw* Court pointed out in that case that the record did not contain a motion seeking the relief the court ultimately granted. The court noted that the Mississippi Rules of Civil Procedure Rule 7(b)(1) provides in pertinent part, “An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writings, shall state with particularity the grounds therefore, and shall set forth the relief or order sought.” Id.

In *Hanshaw*, the Court stated that “[a] party should not be permitted to circumvent notice requirements by offering a motion orally instead of a written one.” Id. Certainly, if parties are required to comply with notice requirements, Judge Shirley has to comply with the same notice requirements. The record clearly demonstrates that Judge

Shirley did not comply with Rule 81. This Court should not permit trial judges to circumvent the notice requirements by offering an Order orally in the absence of a transcript, especially when the trial court's written Order provides lacks the provision that may later constitute the basis to hold a non-party in contempt.

In this case, Judge Shirley stated in the November 8, 2006 Order that the Order "may be served" on Rev. Hines. In some places, due process may not have much meaning, but in Mississippi, due process certainly should mean more than notice via a telephone call from an investigator to a non-party whose presence is commanded by the Court and directing the non-party to appear. Judge Shirley's kind of notice in this case is comparable to a complete absence of service of process which offends due process..

Like *Hanshaw*, there is nothing in the record indicating that a Motion and/or Order to Show Cause had been docketed prior to the November 14, 2006 hearing. Judge Shirley's November 8, 2006 did not command Rev. Hines' presence in court on November 14, 2006. In fact, in the November 8, 2006 Order, Judge Shirley cavalierly stated that the Order "may be served" on Rev. Hines. Rule 81 notice, where it is required, is compulsory, not permissive. Therefore, this Court should reverse and render.

In the instant case, even if this Court somehow finds that Rev. Hines received proper notice pursuant to Rule 81, this Court still must reverse Judge Shirley's finding of contempt as the record lacks a written Order compelling Rev. Hines' appearance in any written order as required by law. See, *Davis v. Davis*, 829 So.2d 712,714(9) (Miss. Ct. App. 2002) (stating that "before a party may be held in contempt for failure to comply with a judgment, 'the judgment must be complete within itself ... leaving open no matter or description or designation out of which contention may arise as to meaning.'")

**A YOUTH COURT JUDGE ABUSES HIS DISCRETION
WHEN HE DENIES A NON-PARTY'S REQUEST TO HOLD
ANY CONTEMPT PROCEEDINGS AGAINST THE NON-PARTY
IN OPEN COURT WHEN THE CONTEMPT MATTER TO BE TRIED
DOES NOT INVOLVE ANY CONFIDENTIAL MATTERS**

Section 24 of the Mississippi Constitution provides that “[a]ll courts shall be open; and every person for an injury done in his lands, good, person, or reputation shall have remedy by the course of law, and right and justice shall be administered without sale, denial or delay.”

In re Gannett River States Publishing Corp., 630 So.2d 351, 352 (Miss. 1994), the media challenged the trial court’s decision to conduct individual sequestered voir dire in a capital murder case. In that case, this Court held that the trial judge erred when he failed to follow the procedure in *Gannett River States Pub. Co. v. Hand*, 571 So.2d 941, 945 (Miss. 1990).

In the instant case, after the prosecutor narrowed the issues to be presented to the court, summarized the expected testimony of the State’s one witness, it was clear that no issues of abuse and/or neglect of a child would be discussed in Rev. Hines’ contempt hearing. Rev. Hines asked the court to allow his case to be heard in open court. Judge Shirley denied the request citing the statute that provides that all youth court proceedings are confidential.

While it is true that youth court proceedings are confidential, this was not a youth court proceeding. It was a contempt proceeding which by the State’s own characterization did not require any testimony from a minor and/or any discussion about any allegations of abuse and/or neglect of a minor. Because the prosecutor announced prior to the commencement of the contempt hearing that he was going to call only one

witness and that witness was going to testify about providing “oral” notice to Rev. Hines to appear in court and would not be discussing any allegations of abuse and/or neglect of a minor, this Court should find Judge Shirley violated Rev. Hines’ constitutional right to have his contempt case heard in open court in the absence of following the procedure set forth in *Hand*.

**A YOUTH COURT JUDGE ABUSES HIS DISCRETION
WHEN THE YOUTH COURT JUDGE PRESIDES
OVER A CONSTRUCTIVE CRIMINAL CONTEMPT MATTER**

This Court must first determine whether the alleged contempt here is either civil or criminal in nature. To determine the nature of the alleged contempt, this Court should examine the pleading. *Dennis v. Dennis*, 824 So.2d 604, 608 (Miss. 2002).

In the Rule 81 Summons issued by the Court on December 5, 2006, Rev. Hines was directed to appear for a “CONTEMPT hearing and then and there to show cause, if any can be shown, why the above referenced minor’s should not be adjudged pursuant to the allegations set forth in the petition, if any, and/or why appropriate action should not be taken with regard to the best interest of said minor/s.” The Rule 81 Summons is not useful here, as it required Rev. Hines to show cause “why the above referenced minor’s should not be adjudged pursuant to the allegations set forth in the petition.” No issues pertaining to the adjudication of a minor were included in the Rule 81 summons. Like other Orders, entered by this Court, the Rule 81 Summons is deficient.

The Motion for Contempt sheds some light on the nature of the alleged contempt. In the instant case, the prosecutor alleged that Rev. Hines “ignored and violated a court order issued by this court on October 31, 2006 and November 8, 2006. The prosecutor also stated Rev. Hines should be required “to show cause, if any he can, why he should

not be adjudged to be in contempt of court for his failure and refusal to comply with the prior Orders of this Court in this cause.” At trial, the prosecutor elected to proceed only on the charge that Rev. Hines failed and refused to comply with the prior Orders, specifically the November 8, 2006 Order and/or Judge Shirley’s oral Order.

In an effort to hide his wrongdoings, Judge Shirley in his December 19, 2006 Order states that this is a civil contempt. Judge Shirley is wrong. In the case *sub judice*, the contempt proceeding was criminal. “In criminal contempt cases, the nature of the punishment is unconditional because the relief “cannot undo or remedy what has been done or afforded any compensation and the defendant cannot shorten the term by promising not to repeat the offense. *Common Cause of Mississippi v. Smith*, 548 So.2d 412, 416 (Miss. 1989).

Judge Shirley noted that “Hosea Hines had notice of all three orders but he simply chose to ignore court order to appear in youth court on the 14th day of November, 2006.” In addition, Judge Shirley stated “Hosea Hines willfully violated the order of the court to appear in youth court on the 14th day of November, 2006.” There is no question that on December 12, 2006 or December 19, 2006, Rev. Hines could not undo his failure to appear in Court on November 14, 2006. Consequently, the contempt here should be deemed criminal, which means that Rev. Hines was entitled to have another judge to preside over the contempt hearing.

In *Purvis v. Purvis*, 657 So.2d 794, 799 (Miss. 1994) the Mississippi Supreme Court held due process required another chancellor to sit at a hearing for alleged contemnor to show cause why he should not be held in contempt for unfounded allegations made against the chancellor. In *Purvis*, Sam Purvis filed a *pro se* motion

during divorce proceeding seeking recusal of the chancellor. Id. at 794. Sam Purvis did not bring the motion on for hearing. Id. Acting *sua sponte*, the court brought on the Motion to Recuse. Id. Sam Purvis represented himself at the hearing. Id. at 796.

At the hearing on the Motion, the chancellor read Purvis' Motion to Recuse into the record. Id. In his motion to recuse, Sam Purvis made disparaging comments about the judge, including but not limited to the following: the chancellor did not have the "mental capacity to know right from wrong and [was] in dire need of psychiatric help.... Has demonstrated that it does not know how to interpret the law or follow it." Id.

The chancellor declined to recuse himself from the case and instead set a show cause hearing where Sam Purvis would be required to show cause why he should not be held in contempt of court for the unfounded allegations made against the court and for having put the Court through this process. Id.

On appeal, Purvis argued that he was denied due process of law because the show cause proceeding was conducted by the same judge who presided over the divorce proceedings and the related motion to recuse from which the alleged contempt originated. Id. at 798. The *Purvis* Court stated in constructive criminal contempt matters "it is necessary to try the individual by another judge in cases of constructive contempt where the trial judge has substantial personal involvement in the prosecution." Id. at 798.

In *Purvis*, the court recognized that "although not every attack on a judge disqualifies him from sitting, common sense leads to the conclusion that it was unlikely that the chancellor in Purvis' cause maintained the detachment necessary for making an unbiased and fair decision." Id. The *Purvis* Court therefore concluded that due process required another judge to sit at Purvis' show cause hearing for contempt.

More importantly, *Purvis* makes it clear that a trial judge who has substantial personal involvement in the prosecution should not try the alleged contemnor. In the instant case, the chancellor had substantial personal involvement in the prosecution. Judge Shirley on November 14, 2006 summarily ordered that Rev. Hines be arrested because Rev. Hines “did not appear as ordered” in the absence of any kind of written order directing him to appear. As this court noted in *Dennis*, due process includes the right to an unbiased judge. In addition, due process includes the right to be presumed innocent until proven guilty beyond reasonable doubt.

A cursory reading of Judge Shirley’s December 19, 2006 Order removes all doubt about Judge Shirley’s fairness and impartiality. In the December 19, 2006, Judge Shirley made finding about matters that the State elected not to prosecute. In the absence of any sworn testimony in support of same, Judge Shirley also commented that he believed that Judge Hines violated his Order of October 31, 2006 and November 8, 2006.

And if that was not enough, Judge Shirley, who claims that he had no *ex parte* conversation in this case, proceeds to rant about his beliefs that “Hosea Hines was attempting to communicate with the children to assist their stepfather, Lawrence Myers, in his criminal legal defense arising from the alleged sexual abuse of his stepchild.....” Here, Judge Shirley essentially accused Rev. Hines of obstruction of justice in the absence of any sworn testimony. Did Judge Shirley just pull this beliefs out the sky? Were Judge Shirley’s beliefs based on his *ex parte* conversations with the investigator? Either way, this Court should be alarmed that a judge would make such an accusation when it is clear from the record that Thompson informed Judge Shirley about the alleged impermissible contact between Rev. Hines and the minor child and Judge Shirley never

bothered to interview the minor children before the Motion for Contempt was filed. The prosecutor who did interview the minor child on December 12, 2006 told the Court **that the statement by the child was Reverend Hines, being a pastor and checking on a member of the church, and according to the young man, did not discuss any issues of the case with him.**

In addition, Judge Shirley stated in his December 19, 2006 Order that “[t]here is no evidence before this court that Hosea Hines (a) respects the privacy rights of the children; (b) would not use his communication with the children to benefit the legal defense of the alleged perpetrator; and (c) would refrain from attempting to have the child recant his allegations of sexual abuse.” Judge Shirley fails to see that there is no evidence before this Court that Rev. Hines does not respect the privacy rights the children. There is no evidence that Rev. Hines used any communication with the minor child in question in this case to benefit the legal defense of the alleged perpetrator. More importantly, there is no evidence in this case that Rev. Hines attempted to have the child recant his allegations. This Court should find that it is clear from Judge Shirley’s own words that he was not the kind of unbiased judge required by due process.

Even if this Court finds that Judge Shirley’s fairness and impartiality were not called into question by his actions and words, this Court still would be required to reverse and render. In *In Re Holmes*, the Court stated, “[i]f the appellant secreted her son or left him at home purposely to frustrate the will of the court, absent an admission by her before the court, this must be proved and would be constructive contempt. Her act, if willful, was one which resisted, from a distance, an order of the court, and therefore, it falls squarely within the definition of constructive contempt.” *Id.* at 679. In *In Re*

Holmes, the Court ordered process to be issued for the child and his mother. Id. at 678.

On March 21, 1977, the mother appeared in court without her minor child. Id. The Court ordered the matter continued until April 8, 1977 and further ordered that the mother to have her child present on April 8, 1977 under the penalty of contempt for failure to do so. Id. On April 8, 1977, the youth court judge summarily adjudged the minor's mother to be in contempt because she appeared without her son. This Court reversed and remanded the judge's decision. The Court noted that the judge could not find that the minor's mother's conduct in that case was willful in the absence of an admission from her.

Unlike the Court in *In Re Holmes*, Judge Shirley did not order that process be issued for Rev. Hines. In *In Re Holmes*, "process was ordered issued for the child and his mother." Certainly, due process required that process be ordered for Rev. Hines before the Court could reasonably expect him to appear on November 14, 2006. In addition, in the absence of an admission from Rev. Hines, there was no evidence before the Court that Rev. Hines "willfully" violated the oral Order to appear in Court on November 14, 2006.

**JUDGE SHIRLEY'S OCTOBER 31, 2006 ORDER DID NOT PROHIBIT
REV. HINES FROM DISCUSSING MATTERS RELATING TO THE MINOR'S
FAITH AND WELL-BEING, MATTERS THAT DID NOT PERTAIN TO
"ISSUES" THAT WERE THE SUBJECT OF THE SHELTER HEARING**

Although the contempt for allegedly violating the October 31, 2006 Order was dismissed by the State, Judge Shirley addressed it in his December 12, 2006 oral Order and December 19, 2006 written Order. Consequently, Rev. Hines will comment brief on that Order.

As stated above, a party and/or non-party cannot be held in contempt for failure to comply with a judgment that is not complete within itself and which leaves open matters

or descriptions or designations out of which contention may arise. *Davis*, 829 So.2d at 714.

In the instant case, Judge Shirley did not bar Rev. Hines from communicating with any parties, including the minor, who were before the Court. The Order clearly provided that the minor's stepfather was barred from having contact with him. Had Judge Shirley wanted to prohibit Rev. Hines from communicating with the minor, Judge Shirley should not said so in his Order. Judge Shirley failed to do so. As such, Rev. Hines could not be held to answer to yet another incomplete order.

In addition, this Court should find that such the October 31, 2006 and the directive from the detectives barring the minor children from Rev. Hines' church runs afoul of the First Amendment.

THE YOUTH COURT JUDGE ERRED IN BARRING REV. HINES AND HIS ATTORNEYS FROM DISCUSSING THE CONTEMPT PROCEEDINGS WHERE NO MATTERS PERTAINING TO MINORS WERE DISCUSSED

For the reasons outlined above, this Court should find that Judge Shirley lacked the authority to prohibit Rev. Hines and his attorneys from discussing the contempt proceedings inasmuch because the contempt proceedings did not require the discussion of any confidential matters pertaining to minors. It follows that if this matter should have been opened to the public and Rev. Hines had a right to a public trial, Rev. Hines and his attorneys should have been allowed to discuss tell the public that there was an allegation that Rev. Hines failed to appear "as ordered" by Judge Shirley and that Judge Shirley found him in "civil" contempt.

CONCLUSION

For the reasons outlined above, this Court should reverse and render Judge Shirley's finding of contempt in this matter. In the alternative, this Court should reverse this matter and remand it to the appropriate court for a hearing before a fair and impartial judge.

RESPECTFULLY SUBMITTED, this the 25th day of June, 2007.

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CERTIFICATE OF SERVICE

I, Lisa M. Ross, do hereby certify that I have this day caused to be mailed, via,
United States mail, a true and correct copy of the foregoing document to the individual
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SO CERTIFIED, this the 25th day of June, 2007.

Lisa M. Ross

Lisa M. Ross, Esq.