

ATTORNEY HANDBOOK

Appointed Cases in Jackson County Family Court, Juvenile Division

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The Juvenile Law Committee of the Kansas City Metropolitan Bar Association has produced this handbook and is responsible for the contents. Any inquires or comments regarding the format or content of the handbook can be directed to: Chair, Juvenile Law Committee, KCMBA
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Appointed cases in Jackson County Family Court, Juvenile Division

Actions pending in Jackson County Family Court Juvenile Division are of several types: abuse, neglect, delinquency and status offenses . Additionally, actions to terminate parental rights, motions to transfer to Courts of general jurisdiction and adoptions are heard in the Jackson County Family Court.

Scope of Appointment

Pursuant to Section 211.211, 211.462 and Missouri Supreme Court Rule 116.01, a party is entitled to be represented by counsel in all juvenile court proceedings brought pursuant to Section 211.211 or Section 211.447, and the court shall appoint counsel whenever a juvenile, parent or custodian of a juvenile is indigent and representation by counsel is necessary for a full and fair hearing. *See also* Local Rule 21.6.1. Counsel shall serve for all stages of the proceedings including appeal of the action in which counsel has been appointed; however, counsel's appointment does not extend to related cases for dissolution of marriage, custody, visitation, paternity, guardianship, adoption, child support, maintenance, or adult abuse of or by any parties to the action.

Duration of Appointment

By administrative order, in a delinquency action, representation of the juvenile terminates fifty days after a final disposition. The disposition is not final if a review is scheduled at the time of disposition. If within fifty days a motion to modify is filed, counsel's appointment continues.

A guardian ad litem appointment continues as long as the case remains open and the child remains subject to the jurisdiction of the court, whether the Guardian ad Litem appointment is as a result of an abuse or neglect action or a delinquency matter.

In an abuse or neglect action representation of a parent terminates when the child is reunited with the parent, provided no review hearing is set, or upon the entry of an order releasing the juvenile from jurisdiction of the court. If the child is not reunited with the parent, and termination of parental rights proceedings are initiated, representation of a parent terminates following the entry of a judgment terminating parental rights, if no appeal is taken, or upon entry of the mandate if an appeal is taken.

Attorney's Fees

Appointed counsel may by written motion, request the court to assess a reasonable attorney's fee and any reasonable and necessary expenses as costs. See Local Rule 21.6.1. However, in Jackson County this generally does not result in payment of fees to appointed attorneys because there is no source of funding for these payments. If an attorney is appointed to represent a non-indigent individual, the court will grant attorney requests for judgment for payment of reasonable fees and expenses, which the attorney can enforce as any judgment.

In the case of termination of parental rights, fees and costs are to be paid by the county except the county may require the custodial agency to pay the costs and fees. *See* Section 211.462.4. As of May 1, 2002, if the Division of Family Services is the custodian, they will pay for services at the trial level at the rate of \$120 for the first 10 hours and \$50 for any time thereafter with a cap of \$2,500. At the appellate level, the Division of Family Services will pay

\$75 for the first 10 hours and \$50 thereafter with a cap of \$1,500. A stipulation for fees and proposed order with a copy of counsel's order of appointment and statement of billing, should be forwarded to the Division of Family Services, Division of Legal Services, 103 North Main, Independence, MO 64050. The stipulation for fees at both the trial level and appellate level should be filed in the Circuit Court because an award of attorney's fees is a matter of discretion for the Circuit Court. *See In Re A. M. C.*, 32 S.W.3d 155, 163 (Mo. App. W.D. 2000).

Role of the guardian ad litem appointed for child in an abuse and neglect proceeding.

The guardian ad litem (GAL) for the child is appointed at the time the Court makes a determination that protective custody of the child is appropriate (Mo.S.Ct. Rule 111.13(a)(1)). In Jackson County, the Office of the GAL (OGAL) is initially appointed as the GAL by administrative order. If OGAL has a conflict of interest, the CASA Project of Jackson County or a private GAL may be appointed. The appointment of the guardian ad litem lasts until the child is released from jurisdiction of the court. This includes any appeal of the juvenile court judgment. If the case proceeds to a termination of parental rights, the guardian ad litem for the juvenile action will be appointed for the child in the termination of parental rights case. Section 211.462. The appointment of the guardian ad litem would last through any appeal of the termination judgment and until release of jurisdiction in the underlying juvenile matter. If a child comes into protective custody and a sibling already has a GAL, the GAL for that sibling will generally be appointed as the GAL for the new child. If a child previously under the jurisdiction of the court again comes under the jurisdiction of the court, the Court generally will appoint the previous GAL. The court might also appoint a GAL for a child charged with a delinquency.

The Supreme Court of Missouri has promulgated standards for GALs. These standards have not been adopted in Jackson County.

The role of the guardian ad litem is to advocate for the best interests of the child. The GAL should be more than a fact-finder; the Guardian ad Litem should zealously advocate a position on behalf of the child. The Guardian ad Litem is an independent party to the action although the Guardian ad Litem may agree with other parties in various stages of the proceedings. The position of the guardian ad litem may overlap with other parties, such as one or both of the parents, the juvenile officer, DFS, third party custodians, or other parties. The guardian ad litem should attend all court hearings and outside court meetings, including meetings at the DFS, to advocate for the child.

The duties of the guardian ad litem include explaining the legal proceedings to the child in an age-appropriate fashion. Unless inconsistent with the child's interest, the GAL should take steps to expedite the proceedings.

The GAL should also attempt to discern the child's wishes. If possible, the GAL should visit the child in his/her placement. It is helpful to observe the child's interactions with foster parents, birth parents, siblings and other significant individuals.

If the GAL believes that attendance at court hearings would be detrimental to the child, the GAL should seek the permission of the court to waive the child's presence.

The GAL should review records and consult with appropriate professionals, e.g. physicians, psychologists, therapists, parent aids, mentors, custodians, and others with knowledge of the child. The GAL is entitled to all available information about the child and

“employees of the division, officers of the court, and employees of any agency involved shall fully inform the GAL of all aspects of the case of which they have knowledge and belief.” Section 210.160.2. Some agencies may require that the GAL provide them with a copy of the Court order appointing the GAL in order to release information.

The GAL should be an active participant in court hearings. “The GAL is supposed to collect testimony, summon witnesses and jealously guard the rights of infants.” *Interest of J.L.H.*, 647 S.W.2d 852, 861 (Mo.App. 1983). “Even though the court is not bound by the opinion or recommendation of the GAL, ‘it is imperative that the guardian ad litem investigate and have input on the perspective of the child’s best interest and this be presented to the trial judge.’ *Interest of J.L.H.*, 647 S.W.2d 852, 860-61 (Mo.App.1983).” *Portwood-Hurt v. Hurt*, 988 S.W.2d 613, 619 (Mo.App. 1999). In Court the GAL shall cross-examine witnesses and elicit facts bearing on the welfare of the child. The GAL shall also make a recommendation to the Court as to placement, visitation, the goal of the case, and services needed to bring about the goal in the case (reunification, termination, adoption). Section 211.462 makes it clear that the GAL may initiate an appeal of any disposition that s/he believes to be adverse to his/her client. During the TPR the GAL is to “be an advocate for the child during the dispositional hearing and aid in securing a permanent placement plan for the child.” The GAL for the child should be more than a potted plant sitting at counsel table.

In a delinquency matter, the GAL’s recommendation may be different than the attorney for the juvenile. The child’s attorney is obligated to represent the child’s wishes. For example, the child may be requesting to go home and his/her attorney would request that. The GAL may believe that foster care or a residential treatment facility is in the child’s best interest, and therefore advocates for out-of-home placement. The GAL should consider the child’s preferences, but is not required to advocate for such.

Role of GAL appointed for a parent

Section 210.160 provides that a GAL shall be appointed for a parent who is a minor or otherwise incompetent and whose child is the subject of proceedings in Sections 210, 211, or 453, R.S.Mo. The GAL is to advocate for the best interest of the parent. This may differ from the expressed desires of the parent. There are, for example, occasions when the GAL would recommend that the parent not have custody so that the parent could concentrate on the parent’s own treatment while the parent would be asking for custody.

The parent does not need to be adjudicated an incompetent to be appointed a GAL. If it appears that the parent is mentally ill or incompetent, then the court should inquire into the mental illness in order to appoint a GAL to protect the parent’s interests. *In re M*, 393 S.W.2d 109, 115 (Mo.App. 1965). In preparation and trial of the case, the GAL has a duty to provide “the same (if not greater) attention and vigilance in defense of the action as he would have employed on behalf of a sui juris defendant who has privately engaged him as counsel.” *Hemphill, by and through Burns, v. Hemphill*, 316 S.W.2d 582 (Mo. 1958).

Often the GAL is appointed for the incompetent parent at the request of the parent’s attorney to assist the attorney in communicating with the client in order to prepare a defense. The main case on the issue held that if a parent has a GAL who is an attorney, it would be duplicative to appoint an attorney to represent the parent as well. The Court held that there is nothing inherently improper for a guardian who is a lawyer to also act as counsel. In order for an attorney to be appointed, the GAL would need to demonstrate an actual conflict of interest in

serving in both roles. *In Interest of JIW*, 695 S.W.2d 513 (Mo. App. 1985). Most of the attorneys who have served in the role of the GAL believe that there is an actual conflict because of the necessity of requesting particular services for the client which the client does not always want.

The major focus when serving as the Guardian ad Litem for the incompetent parent is that the Guardian ad Litem may need to ask for extraordinary services to meet the needs of the parent. The Guardian ad Litem will probably need to be specific about services needed and how the Division of Family Services should provide them. For example, DFS may need to actually take a limited parent to services, as opposed to simply making a referral for the parent to call and set up him/herself.

Types of Juvenile Cases

In Jackson County, abuse/neglect cases are prosecuted by a team of attorneys on dockets separate from delinquency matters, and are heard by the Judge or Commissioner.

Delinquency cases are those in which children under the age of 17 are charged with committing acts which would be criminal, if adults committed them. A significant exception to this rule is that anyone over the age of 15-1/2 whom commits a non-felony traffic violation will be tried in the general court. Children who are charged with delinquent acts enjoy special protections as juveniles and are still entitled to most of the panoply of constitutional rights afforded adult criminal defendants. In addition to the substantive and procedural rights afforded them under the U.S. Constitution, juvenile defendants in Missouri generally cannot be questioned by law enforcement without a parent, guardian or custodian; cannot be held in facilities with adult criminals or criminal defendants; there are limitations regarding the gathering, use, and retention by law enforcement of fingerprints and photographs of juveniles.

RSMo. 211.151

RSMo. 211.071 describes situations in which the state can try children as adults for criminal charges. In Jackson County, these are referred to as “certification hearings.” Although the Juvenile Officer’s attorneys may wish to present these as routine and summary proceedings that can be handled in court in 30 minutes, these are serious proceedings, they carry the highest level of jeopardy for children, and must be defended vigorously. It is not recommended to approach these proceedings without thorough preparation and expert testimony whenever possible.

RSMo. 211.031 also permits the court to take children under jurisdiction when they have been found to have committed “status offenses.” These include truancy, running away from home, being beyond parental control, or engaging in behavior or associations injurious to the welfare of the child or others. (RSMo. 211.031(2)(a)(e). These are called status offenses because they are only offenses due to the age of the child. They are civil charges, which must be proven only to a clear and convincing standard of proof and are rarely prosecuted alone in Jackson County. There are a number of pretrial diversion programs to address these issues, and they are only brought before the court in extreme circumstances or in conjunction with delinquency matters when the AJO is piling charges on a kid.

RSMo. 211.031(1)(a) grants exclusive original jurisdiction in proceedings when the parents or other legally responsible persons “neglect and refuse to provide proper support, legally

required education, medical, surgical or other care necessary for a child's well-being." Abuse is further defined as "any physical injury, sexual abuse, or emotional abuse inflicted upon a child other than by accidental means by those responsible for the child's care, custody and control. RSMo 210.110(1) (Spanking "administered in a reasonable manner" is not considered abuse in Missouri.)

Abuse and Neglect cases are similar in nature, and the description of the process will apply to both Abuse and Neglect cases. The cases typically originate when a hotline call is made to the Division of Family Services. Hotline calls are either mandatory or permissive. Certain professionals are "mandated" reporters and must under penalty of law inform the Division of Family Services via the hotline that abuse/neglect is suspected. *See* 221.115. In addition to those people who are required to make hotline reports, anyone can make a report of abuse or neglect to the Division of Family Services. The hotline number is 1-800-392-3738. These reports can be anonymous.

When a hotline report is received by the Division of Family Services, the information is coded either an investigation or an assessment. An investigation requires co-investigation with local law enforcement and requires immediate response. An assessment requires that the Division of Family Services continue to assess the needs and safety of the children.

Both the investigation and the assessment are to be conducted to determine whether the children are at immediate risk. If the children are considered to be at immediate risk, the Division of Family Services will attempt to create a safety plan for the children to allow them to stay with a parent or family member. If a less restrictive safety plan cannot be created, the Division of Family Services may ask for the children to be placed in DFS custody until a protective custody hearing can be held.

To obtain temporary custody of a child, prior to the filing of a petition, the Division of Family Services will request the Juvenile Officer issue a temporary protective custody authorization. The protective custody authorization is issued by the Juvenile Officer's representatives and allows the short term protective custody of a child. The Juvenile Officer must then apply to the Court for an ex parte order removing the child from the custody of the parents. Once the Court has issued an ex parte order removing the child from the custody of the parent/guardian, the parent/guardian has a right to have a protective custody hearing within three days. *See* § 211.032. Although not automatically set within three days, Jackson County does hold a protective custody hearing in every case where the Court has removed the child on an emergency basis.

If the Juvenile Officer determines that the child is not at immediate risk so as to require removal from the home, Division of Family Services may open a case and provide social services to the family, without court intervention. The Division of Family Services may request court intervention while the children remain in the home. If the Division of Family Services determines that the children are not at immediate risk at the time of the initial contact with the family, they may, during the course of the investigation, determine that the child is at risk and request that the child be removed from the home.

The process that takes the case from the investigation stage to the filing of a petition occurs when the Division of Family Services determines that the child or children are at risk of harm and requests court that they be removed from the home. This also occurs when the Division of Family Services determines that although the children may be safe in the home, court

involvement is necessary for other reasons. The Division of Family Services provides information to the Juvenile Officer through standard referral procedures, typically requesting that the children be removed from the custody of the parent.

Once the Juvenile Officer receives the referral, a decision is made whether or not to enter a temporary custody order. The Juvenile Officer may enter temporary authorizations of protective custody and must then file a petition within 24 hours and obtain an ex parte order of protective custody. The Juvenile Officer may decline to enter temporary custody orders and file a petition based on the information provided by the Division of Family Services while the children remain in the home.

Upon entry of a temporary custody authorization removing the children from the home, the Juvenile Officer must present information to the court requesting an ex parte order removing the child from the home within the 24 hours. If the Court enters an ex parte order removing the child from the home, a protective custody hearing is scheduled within approximately 7 to 10 days, unless a party requests a hearing within three days. All parties have the right to request that the initial protective custody hearing occur within the first three days of the Court's ex parte order. If the Court does not enter an ex parte order, a protective custody hearing or a pre-trial hearing may be set.

The protective custody hearing is typically a brief hearing, without evidence being formally presented. Protective custody hearings are generally held Tuesday, Wednesday and Friday mornings at 10:30 a.m. There are generally 5-10 children on a detention docket.

The Attorney for the Juvenile Officer handling the docket, or a legal assistant calls the parties into the Courtroom. Parents, Attorneys, social workers and the Attorney for the Juvenile Officer will sit at the table. The child or children may sit at the table if there is room.

The Attorney for the Juvenile Officer will announce the case, giving the names of all people present in the case. A copy of the petition will be provided to parties and the attorneys if not provided before the hearing. Additionally, the parents attending the protective custody hearing and the custodian of the child will receive a summons. The Attorney for the Juvenile Officer will offer the "social file" of the child or children, and then request that the Division of Family Services make a recommendation. The recommendation of the Division of Family Services is typically the same as in the written report prepared for the hearing, which should be provided to attorneys prior to the protective custody hearing by either the Attorney for the Juvenile Officer or the Division of Family Services. Each party will have an opportunity to make recommendations to the court regarding temporary custody and other issues.

The Court must determine whether there is a need for protective custody and may enter orders that are deemed to be in the best interest of the children. Specific services can be requested as well as specific visitation plans can be requested. The Court will typically allow each party to make their recommendations and requests and then will enter orders regarding each child. The Court will orally give orders, and will provide a copy of the detention order at the close of the hearing. If there is more than one child, the Court may write the special conditions of the order on only one of the written orders and on the remaining refer parties to the order of the child wherein the court has written the conditions. If the Court schedules a subsequent protective custody review hearing it will be noted on the protective custody order.

It is important to know that if you represent a parent that may not be a parent of all of the children, that you may not have received a copy of the order of the child wherein the specific conditions are ordered. (You will know this if the detention order has "see JV. . ." and that petition number does not match the petition number of your client's child.)

The next hearing will typically be the "Pre-Trial" hearing. The court may note the date of this hearing on the detention order. The date for the next hearing will also be found on the summons that each parent receives. The Docketing Unit will send to each parent and each attorney, a Notice of Hearing. Attached to the notice that the attorney receives will be a "packet" of information. Included in this packet will typically be the following:

- Notice of Hearing
- Petition or Motion to Modify
- Notice regarding court costs, fines, restitution and child support,
- Notice regarding Legal Malpractice Insurance
- Copy of Protective custody Order
- Ex Parte Protective custody Order
- Authorization for Temporary Protective Custody
- Referral Cover Sheet
- Protective Custody Assessment
- Report of the Division of Family Services for detention hearing.

The "Pre-Trial" hearing will generally be set 4 – 6 weeks after the initial detention hearing. This hearing gives the parent an opportunity to have any pre-trial issues addressed or to enter a stipulation rather than have a trial on the pleadings. Usually several matters are set at the same time and cases are individually called into the courtroom. A parent can either enter a denial to the allegations, enter a stipulation to the allegations or admit the allegations. If a denial is entered, the matter will be set for trial. If the matter is resolved at this stage by a stipulation or admission, the matter can go to "disposition" immediately or be reset for a separate dispositional hearing. The disposition hearing will be discussed later.

If a denial is entered and a trial is set, the Court may hear requests for a modification of any prior order. If the request is contested, the Court may feel that the Commissioner that heard the detention hearing should hear the requests so that parties may fully discuss the allegations of the petition without concern that the Commissioner will then be hearing the trial. This would be accomplished by the Court scheduling a detention hearing in addition to scheduling the matter for trial.

The time between the Pre-Trial and the Trial is generally 30-45 days. At trial, it is the burden of the Juvenile Officer, through the Juvenile Officer's attorney, to present clear, cogent and convincing evidence to sustain the allegations of the petition. The Attorney for the Juvenile Officer may present witnesses and other evidence in order to meet the burden.

The rules of evidence do apply and it is appropriate to proceed as in any other civil trial. Discovery procedures are addressed separately in this handbook.

The parent may offer testimony and other evidence at the trial. Subpoenas may be obtained from the Family Court Records and can be served as in any civil matter. The Attorney for the Juvenile Officer, as the plaintiff, has the burden to present the case. It is appropriate to move to dismiss the case at the close of the Juvenile Officer's case if one feels that the burden of

clear, cogent and convincing evidence is not reached. (If the matter is a motion to modify relating to abuse and neglect, the burden of proof is by a preponderance of the evidence.)

The Attorney for the Juvenile Officer often will call a parent to the stand to provide evidence in their case in chief. Since this is a civil matter, a parent must testify if called. A parent may assert their constitutional right to not incriminate themselves to any specific question. When a question is not answered based on the assertion of the Fifth Amendment right, the Court may take a negative inference against the asserting party. It is important to advise the client of the possibility that they may be called to testify and discuss the impact of asserting their Fifth Amendment right to not incriminate themselves. If criminal charges are to be filed, potentially any statement they give under oath may be used against them. (Additionally there is the possibility that any statement made to the Division of Family Services or any therapist/evaluator could be used in a criminal matter.)

After the Attorney for the Juvenile Officer closes his/her evidence, the parent will typically present his/her case. A parent may wish to testify and should be fully advised as to the potential impact of their testimony as discussed above. The parent may also call his or her own witnesses and submit any records they wish the Court to consider in defense of the allegations. The parent may use the subpoena power of the Court to ensure that witnesses appear and that documents are produced.

Many therapists will be willing to accept a subpoena by mail or fax, however, this may not be an enforceable subpoena. Generally, therapists will attend the hearing when they have agreed to accept the subpoena by mail or fax. It is always wise to utilize a subpoena rather than rely on the probability of the witness showing up.

It is important to distinguish the difference between witnesses regarding the adjudication of the allegations as opposed to witnesses regarding dispositional issues such as how well the client is doing in therapy. At adjudication, the witnesses need to be in response to the allegations.

After the presentation of the parent's case, the Guardian ad Litem may present evidence. Occasionally, the Guardian ad Litem may present his/her evidence after the Attorney for the Juvenile Officer and before the parents.

Motions to dismiss or for amendment of the pleadings to conform to the evidence may be submitted orally at the close of all evidence, and argument is permitted on such motions.

If the Court finds that the Attorney for the Juvenile Officer has met the burden of clear, cogent and convincing evidence to sustain the allegations, the petitions are sustained and the children are placed under the jurisdiction of the Family Court. The Court may then begin the Dispositional hearing wherein the parties present evidence regarding placement, services to be completed, goals for the case, contact and visitation for the various participants, and any other matters that would be considered useful for the Court in determining what should occur in regard to the children.

The Division of Family Services should have completed a "report" that summarizes the occurrences in the case including what services have been offered, what services have been utilized; past, current and potential placement information regarding each child; current information on each parent including what services have been accomplished and what barriers to reunification exists; permanency planning goals and various other relevant information.

The Attorney for the Juvenile Officer will have provided a copy of this to the attorneys of record prior to the hearing. (Oftentimes, the Division of Family Services or the Attorney for the Juvenile Officer does not submit this report timely and the outside attorney will receive it just a few minutes prior to the hearing.) Attached to the report should be the "Affidavit of Reasonable Efforts" and copies of any report submitted by any service provider.

The reports are made part of the child's social file and will typically be offered as an exhibit of the Juvenile Officer. If all parties are in agreement with the reports and there is no additional information that could be gained by having the social service worker testify, parties may "stipulate" to the report or "submit" on reports for the dispositional hearing. Additionally, if all parties are in agreement with the reports and recommendations, they may submit the entire matter on reports. If there is a disagreement or different recommendations, the social worker may testify as well as any other witness that would add to the information before the Court. The Court will allow testimony of witnesses and arguments of the parties prior to entering a judgement in the matter. At the close of the dispositional evidence the attorney for each party will have the opportunity to request specific orders regarding placement of the children, contact and visitation, specific services to be provided by the Division of Family Services and any other relevant request that is directed toward reunification or any other permanency planning for the children.

Once the Court has entered a judgement and order of disposition has been made, the adjudication is final for the purpose of appeal. In all matters heard by a Commissioner, the parent has a right, pursuant to Supreme Court Rule 129.13, to request a rehearing. This notice is given on every Judgment and gives the time frame for the filing of such a motion as being within 15 days after the mailing of the notice of the filing of the judgment of the Court. A request for rehearing is a post-trial motion for purposes of appeal of the judgement.

Appellate procedure is as in other civil appeal with the exception for termination of parental rights or adoption when the time frame is shortened to speed up the appellate process.

Subsequent to the dispositional hearing, the matter will be set for Judicial Review. This review hearing can be at any time but is typically six to twelve months after adjudication. Because of the Adoptions and Safe Families Act, time frame for permanency is strictly followed. The Division of Family Services must move toward termination of parental rights when a child has been in foster care for 15 out of the most recent 22 months. Because of this, the courts tend to set a review date around six months after adjudication to determine the progress of the parents toward reunification and to ensure that the Division of Family Services is properly providing services.

Additional non-appearance or non-contested hearings may be scheduled by the Court to review the matter via the reports of the Division of Family Services. The reports are to be made available to all parties prior to the non-appearance or non-contested date so as to allow the parties to request a Judicial Review of the matter. The judgment will clearly indicate whether appearances are required and the mechanism for requesting a Judicial Review.

At any time that there is a recommendation that the child(ren) should be returned to the custody of the parent or a recommendation for any other change of the Judgement, a motion to modify the prior order of disposition may be filed. It is best to state the reasons why the change should be made, the therapeutic support for the change and whether each party to the case is in agreement with the change of placement. Such a motion may be filed at any time. Additionally,

it is appropriate to provide a copy of the written recommendations of the therapist by attaching the written document as an exhibit. If the Division of Family Services is supportive of the placement, the social service worker may provide a report that can be attached to the motion.

Section 210.710 provides that every child committed to the custody of DFS shall have a permanency hearing before the court no more than 12 months of initial placement. Section 210.710.1 states “the permanency hearing shall be for the purpose of determining in accordance with the best interest of the child, including whether or not the child should be continued in foster care or whether the child should be returned to the parents...or whether proceedings should be instituted by either the Juvenile Officer or the DFS to terminate parental rights and legally free such child for adoption.”

If the child(ren) has been in foster care for 15 out of the most recent 22 months, the matter should be set for a permanency planning review. At this hearing, which is similar to any other review hearing, the Court will expect each party to provide to the Court their permanency plans for the child. Permanency Plans include reunification, adoption, guardianship or independent living when the child is out of the home for this period of time.

For any permanency plan other than termination of parental rights and adoption, the Court must find compelling reasons exist so as not to seek termination of parental rights. Once this finding is made, the Division of Family Services is no longer required under the Adoption and Safe Families Act to seek termination of parental rights based on the child(ren) being in foster care for 15 out of the most recent 22 months.

Division of Family Services Meetings in Abuse & Neglect Matters

Division of Family Services regularly convenes Family Support Team meetings. At a minimum, they include parents, social workers, GALs and Attorneys. They may also include therapists, parent aids, nurse case managers, school teachers or counselors, extended family members, or others as deemed helpful by the Team. These meetings are of critical importance. Service needs are identified, case plans are developed, deadlines are set, written service agreements are negotiated. Although these are confidential proceedings, admissions made by parties at these meetings are admissible in court. It is advisable for attorneys to attend. If an attorney cannot, it is essential to discuss the meeting and prepare client for their participation. These meetings are held on schedules that are determined by the status of the child's custody. If the child is in foster care, the meetings are held within 72 hours of placement in care, 30 days after being placed in care, and every six months thereafter. If the child is in relative or kinship care, the meetings are held after 30 days and thereafter at least annually. If the child is placed in the custody of his/her parents, the meetings should be held annually. (Please note that DFS has creative methods of calculating time frames.)

These meetings are scheduled by DFS, typically without inquiring whether or not parents, attorneys, service providers or others are available. By policy, DFS is to arrange these meetings when essential parties can attend. Attorneys should feel free to request these to be scheduled when they and their clients can attend. Social workers may claim that these meetings cannot be rescheduled. If social workers or supervisors decline to do so, it is recommended to make the request of the area program managers, who can assure that the meeting will be scheduled at an appropriate time.

Termination of Parental Rights

A termination of parental rights action may be filed by the Attorney for the Juvenile Officer, the Division of Family Services or an adoptive petitioner. The grounds for termination of parental rights may be found in §211.447. Most grounds for termination of parental rights require the children have been under the jurisdiction of the Family Court for at least one year. Several grounds do not have this restriction. A review of the statutes giving authority for termination of parental rights is imperative before starting this kind of case.

The procedure that is typically followed in the filing of the termination of parental rights matter is started when a party believes that one or more grounds exist for termination of parental rights. The Division of Family Services has a procedure for referral to their legal services unit. If the Division of Family Services legal services unit believes ground exist for termination of parental rights, then a referral is made to the office of the Juvenile Officer for determination if they will file the matter. The Attorney for the Juvenile Officer has thirty days after receipt of the referral to decide whether or not to file to terminate the parental rights of the parent.

If the Attorney for the Juvenile Officer declines to file and the Division of Family Services is required under the law to pursue the termination of parental rights or otherwise believes it is appropriate to proceed with termination of parental rights, then they will file to terminate parental rights. Additionally, the adoptive resource for the child(ren) may file a two count petition to terminate parental rights of the parents and for adoption of the child(ren).

For termination of parental rights petitions filed by the Division of Family Services or the Attorney for the Juvenile Officer, the matter will be set for a "service return" hearing. This will be the date that appears on the summons served on the parties. The parties are expected to appear at this hearing. Typically, this hearing is when unrepresented parties may request appointment of counsel. The parties do not generally appear before the judge at this hearing. If the parties fail to appear at this setting, the matter is set for a default trial.

In the matters where parents appear and are appointed counsel, the next setting will be a pre-trial conference between the parties. Parties expected to attend this pre-trial conference are: the assigned social service worker, the Guardian ad Litem, attorneys for the parents and Attorney for the Juvenile Officer and or the attorney for the Division of Family Services. Attorneys are expected to have met with their clients prior to this conference.

At the Pre-Trial conference the parties are to discuss the following:

- Possibility of settlement;
- Alternatives to termination of parental rights;
- Exchange of key exhibits;
- Length of trial;
- Stipulations as to facts;
- Waivers of foundation and identification of exhibits;
- Legal and evidentiary issues;
- Motions or requests for additional discovery;
- Designation of dates to responses to requests for admissions; and
- Any alternative dispute resolution techniques which might help settle the case.

After the pre-trial conference, parties are expected to submit a joint report to the Court along with a proposed trial date. If any issues need the assistance of the Court, a Pre-Trial hearing may be set.

The court also expects that the parties share a list of exhibits and provide copies of anticipated exhibits for opposing counsel's review at least ten days prior to trial. Parties are to prepare a collective exhibit list no later than five days before trial. The list should contain specific exhibit numbers as marked for identification, a short description of the exhibit and if the exhibit is objected to by any party and if so, which party so objects. Pursuant to Local Rule 24.1, exhibits are to be marked consecutively and so marked before trial. The list is to be submitted to the Court and Court reporter at trial. Parties may obtain exhibit stickers at the pre-trial conference.

If a parent desires to enter a voluntary consent to the termination of his/her parental rights and consent to adoption, a specific form must be used. A copy of this form is included in this handbook. Additionally, the form is available from the Attorney for the Juvenile Officer handling the matter. This form is completed by the client either in front of a notary or with two witnesses unrelated to the case. The court may require the consenting parent to testify as to the voluntary nature of the consent and to ensure that the parent understands the finality of the consent.

The trial of a termination of parental rights matter will typically proceed in the same sequence as an abuse/neglect trial. The Attorney for the Juvenile Officer has the burden of proof and must meet a standard of clear cogent and convincing evidence. There are two prongs required in a termination of parental rights action. First the court must determine if any statutory ground exists for which the parental rights could be terminated. If the court finds that there is evidence to sustain one or more ground for termination of parental rights, then the court must make a determination that termination of parental rights is also in the best interest of the child. Although there are these two prongs, the hearing is not bifurcated and the evidence is presented as one hearing.

Again, the parent may be called to testify by the Attorney for the Juvenile Officer and may assert his/her Fifth Amendment right against self-incrimination. All rules of Civil Procedure apply in this trial and the attorney must preserve issues for appeal. It is recommended that a review of case law be conducted prior to the trial of a termination of parental rights matter to fully advise counsel of the current interpretations of the termination of parental rights statutes.

Rules of civil procedure apply and should be closely followed in that a significant number of termination of parental rights matters are appealed. Objections need to be preserved for appeal and a clear record should be made to protect the parent's rights over their children.

It is important to fully discuss with the client the appellate process and grounds for appeal. The Family Court appointment does extend to the appeal unless the attorney is allowed to withdraw as counsel for the client. If the attorney files a motion to withdraw, the attorney needs to consider deadlines for the filing of the appeal and should insure that the client's right to appeal is protected during such time as the motion to withdraw is pending. A motion to withdraw at this stage is rarely granted in Jackson County.

The appellate process is generally as any other civil appeal, except the time frame is shortened for the filing the Record on Appeal, Transcript on Appeal and the briefs. See Rule XXX of the Missouri Western District Court of Appeals.

Delinquency

A police investigation or an arrest of a juvenile triggers a referral to the juvenile officer and begins the process of a delinquency case. After the investigation is complete, or when the juvenile is arrested, a referral is made to the Juvenile Officer. Based upon a review of the police reports, a decision is made as to whether the juvenile will be charged. A juvenile may be charged in a delinquency, if it is alleged that their actions would constitute a crime if he/she were over the age of 17 years. The alleged crime does not have to occur in Jackson County if the child is already under the jurisdiction of the Family Court or if he/she is a resident of the County.

Depending on the nature of the alleged crime, the Juvenile Officer might authorize protective custody of the juvenile for placement in detention. Once the Juvenile Officer authorizes protective custody, a petition must be on file within 24 hours and a request for an ex parte order of protection must be completed. If the ex parte order of detention is entered, a detention hearing must be held within 72 hours, excluding weekends and holidays. If the ex parte order is denied the juvenile is released pending a detention hearing or arraignment.

At the detention hearing, the child may be represented by counsel. If no counsel is present, the child may request an attorney for the hearing and the matter may be reset for the appointment of counsel. At the current time, the Office of the Public Defender typically specially enters their appearance for purpose of the detention hearing only. The detention hearing is not conducted as an evidentiary hearing. The attorney for the juvenile officer will present the Commissioner with the social file for a review of the police reports to determine if there is probable cause to detain the juvenile. If the Court finds probable cause, each party will be given an opportunity to make recommendations as to the continued placement of the juvenile. The court will enter a detention order and each party will receive a copy before they leave the courtroom. The juvenile and the parents will each receive a summons and a copy of the petition or motion to modify. The summons will have the arraignment date.

Attorneys are typically appointed between the detention hearing and arraignment. The attorney will receive a “packet” from the docketing unit. The packet will contain:

- Copy of the appointment
- Notice of Hearing
- Copy of Petition
- Notice of Legal Malpractice Insurance
- Notice regarding Court costs, Fines, Child Support
- Referral cover sheet
- Authorizations for Temporary Custody
- Detention Order
- Police Reports

The arraignment, which will be the next hearing, will be set approximately 2-4 weeks after the detention hearing, depending on the juvenile's placement. The arraignment provides the official notification to the juvenile of what he/she is charged with in the petition. A juvenile can

enter an admission or a denial. If an admission is done at this setting, the matter can go straight to disposition or be reset for an additional hearing.

The juvenile may enter an admission at the arraignment or at the trial setting. The Court may require the juvenile to make a factual basis to the allegations and acknowledge a waiver of rights before the admission is accepted. This is most often accomplished by having the juvenile take the stand and questioning him/her in a procedure similar to an adult guilty plea. Generally the Court must be convinced that the admission constitutes a voluntary and knowing waiver of the various constitutional rights of the juvenile. A list of the basic constitutional rights of a juvenile is included in this handbook as well as a basic list of questions used for the juvenile's testimony at the admission.

In delinquency matters as in adult criminal matters the standard of proof is beyond a reasonable doubt. The Juvenile Officer may present testimony, documentary and any other admissible evidence to establish that the juvenile committed the acts as alleged. The rules of evidence do apply and the attorneys must present proper questions and evidence.

The juvenile cannot be called as a witness by the Attorney for the Juvenile Officer. The juvenile must be present for the hearing. Motions to dismiss at the close of the Juvenile Officer's evidence and at the close of evidence are appropriate.

The juvenile may present evidence, but is not required to do so because the burden of proof rests with the juvenile officer. The evidence may be in the form of witnesses, documents or other admissible evidence. The juvenile may use the subpoena power of the Court to have witnesses appear on his/her behalf. The juvenile enjoys the same presumption of innocence as anyone accused of a crime, and no inference can be drawn from refraining to testify. The juvenile may testify and should have the ultimate decision on whether or not he/she testifies.

If the Court sustains the allegations or the juvenile admits to the allegations, the matter then turns to the disposition of the case. This part of the hearing may be held immediately following adjudication or be reset to a later time. The Court will hear evidence as to the current situation of the child and his/her family and the service needs of the child. The goal for the court is to provide proper services to rehabilitate the child while protecting the community. A deputy Juvenile Officer is typically assigned to complete an investigation regarding the juvenile and will make recommendations as to placement and services for the child and his/her family. It is similar to an adult sentencing hearing.

After adjudication and disposition of the delinquency matter, a review is typically not set and the appointment expires 50 days after the date of judgment, unless the matter has been appealed or a subsequent motion to modify is filed by the Attorney for the Juvenile Officer within that time frame. Appeal may be taken from the final judgement as in any other **civil** matter.

CERTIFICATION HEARING (TRANSFER TO A COURT OF GENERAL JURISDICTION)

The Statute

ACertification of the juvenile@is the procedure which enables the Family or Juvenile Court to relinquish jurisdiction to allow for prosecution under the general law. In 1995, the

Missouri Legislature passed a bill reforming several key aspects of the juvenile justice code. These changes were recommended by the Task Force on Children and Families, which stressed the fact that certification of juveniles to stand trial as adults should be regarded as a last resort. @ Christine Blegen, *Creating Options for Dealing with Juvenile Offenders (Juvenile Crime Bill)*, Journal of the Missouri Bar (January/February 1996) (quoting *Missouri Supreme Court Task Force on Children and Families, Policy Position on Violent Juvenile Crime B The Need for Systematic Change* (Jan. 24, 1995) (submitted to all members of the General Assembly)).

One significant change to the statute was the addition of sections (7) and (10) as additional factors the court should consider when determining whether a child should be certified as an adult. Another significant change is the demand that a certification hearing be held if a child of any age is charged with first or second degree murder, first degree assault, forcible rape, forcible sodomy, first degree robbery, or the distribution of drugs. There are now ten factors under Section 211.071, RSMo, which the court should consider in determining whether a child is a proper subject to be dealt with under the provisions of this chapter. @ The factors include, but are not be limited to:

- (1) The seriousness of the offense alleged and whether the protection of the community requires transfer to the court of general jurisdiction;
- (2) Whether the offense alleged involved viciousness, force and violence;
- (3) Whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted;
- (4) Whether the offense alleged is a part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the juvenile code;
- (5) The record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements;
- (6) The sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living;
- (7) The age of the child;
- (8) The program and facilities available to the juvenile court in considering disposition;
- (9) Whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court; and
- (10) Racial disparity in certification.

Case Law

Case law generally supports juvenile certification to stand trial as an adult. This is especially true for offenses involving weapons, offenses involving the use of viciousness, force and violence, and offenses against persons. An offense against a person is especially damaging where injury results. In evaluating whether the juvenile should be certified to stand trial as an adult, the general rule is that [t]he certifying court need not give equal weight to each of the listed factors, nor is [the court] required to make an express finding on each one. @ *State v. Woodworth*, 941 S.W.2d 679, 696 (Mo. Ct. App. 1997).

In *Woodworth*, a 16-year-old juvenile was charged with murder, first-degree assault, burglary, and armed criminal action. *State v. Woodworth*, 941 S.W.2d 679 (Mo. Ct. App. 1997). The court found adult certification appropriate, based on the violent nature of the alleged offense, the current age of the defendant (19), and the inability of the court to commit the defendant to the

Division of Youth Services (because of his current age). *Id.* at 696. The court, as further support for certification, also relied on the age of the juvenile at the time of the offense and the fact that the offense charged involved serious injuries to persons. *Id.* The court stated, *Agiven these factors, the juvenile court was well within its discretion in certifying [the juvenile] for trial as an adult.* *Id.* at 697. *See also State v. Seidel*, 764 S.W.2d 517, 518 (Mo. Ct. App. 1989) (holding that certification of a 16-year-old defendant convicted of attempted first-degree robbery and armed criminal action was appropriate, because the offenses were *Against persons,* *involved Aviciousness, violence and force,* *the juvenile presented a threat to society, and because of little chance for rehabilitation within the juvenile system*); *State v. Garbe*, 740 S.W.2d 266, 268 (Mo. Ct. App. 1987) (holding the certification of 16-year-old juvenile convicted of first-degree assault, first-degree burglary, and armed criminal action was appropriate based on the offense itself, which included *Aviciousness, force and violence,* *and was committed Against persons, with personal injury resulting*).

Age and Racial Disparity

Age and racial disparity were added in 1995 as additional factors courts should look to when determining whether certification of a juvenile is appropriate. Though age was only recently added as an enumerated factor, courts have generally looked at the age of the juvenile in most cases of certification. The closer a child is to the age of seventeen, the more likely it is the court will find certification appropriate. *Woodworth*, 941 S.W.2d at 697.

Racial disparity is one factor that has yet to be addressed. Racial disparity was not defined by the legislature when the 1995 amendments were enacted, and there are no cases to date interpreting how racial disparity should be evaluated.

CERTIFICATION IS PERMANENT

Certifying a juvenile is a serious matter, as it ends a juvenile's chance for rehabilitation within the juvenile justice system. Sections 211.071.9 and 211.071.10 read:

9. When a petition has been dismissed thereby permitting a child to be prosecuted under the general law, the jurisdiction of the juvenile court over that child is forever terminated, except as provided in subsection 10 of this section, for an act that would be a violation of a state law or municipal ordinance.

10. If a petition has been dismissed thereby permitting a child to be prosecuted under the general law and the child is found not guilty by a court of general jurisdiction, the juvenile court shall have jurisdiction over any later offense committed by that child which would be considered a misdemeanor or felony if committed by an adult, subject to the certification provisions of this section.

The statute provides that, without exception, the only way in which a juvenile may return to juvenile status once certification has occurred, is if the juvenile is found not guilty of the offense with which he is charged. The severity of the statute was recently put to test in *State v. Davis*. 988 S.W.2d 68 (Mo. Ct. App. 1999). In *Davis*, a juvenile was certified to be tried as an adult. *Id.* at 69. The original criminal charges were dismissed; however, the state subsequently

brought unrelated criminal charges against the juvenile, charging him in a court of general jurisdiction. *Id.* The juvenile appealed, insisting the court of general jurisdiction did not have jurisdiction over the current matter. *Id.* In finding against the juvenile, the appellate court stated that “[s]ince a dismissal is not the same as a finding of not guilty, the exception in ‘ 211.071.10 does not apply when there is a dismissal, and the trial court retained jurisdiction over respondent.” *Id.* at 70. The Court further noted that had the legislature intended a dismissal to cause reversion of jurisdiction to the juvenile court, the legislature would have included such language in the statute. *Id.*

APPELLATE REVIEW OF CERTIFICATION

Ripeness

There is no right to an interlocutory appeal from a juvenile court decision certifying a juvenile as an adult. *In the interest of T.J.H.*, 479 S.W.2d 433 (Mo. 1972) (holding that an order relinquishing jurisdiction to deal with a child under the Juvenile Code is not a final order from which an appeal shall be allowed). When the juvenile court has dismissed pending petitions to permit prosecution of the juvenile under the general law, a juvenile must file a motion to quash or dismiss the criminal information or file a motion to remand to the juvenile division of the circuit court. *State v. Wilkins*, 802 S.W.2d 491 (Mo. en banc 1991). If the juvenile fails to do this, he or she waives any right to raise an objection to the juvenile court jurisdiction, or to defects in the proceedings in which the certification took place. *Id.* See also *State v. Thomas*, 970 S.W.2d 425 (Mo. Ct. App. 1998) (holding that the dismissal of a Chapter 211, RSMo, petition to allow the prosecution of a juvenile as an adult for rape is not a final order from which an appeal is allowed, and that the exclusive method for review of such a decision is to file a motion to dismiss the indictment in the court of general jurisdiction).

Standard of Review

The standard of review in cases challenging certification is minimal. In circumstances where the juvenile has properly brought the issue of appeal before the court, the standard of review is whether, in the totality of the circumstances, the juvenile court abused its discretion in issuing the certification order. *In the interest of A.D.R.*, 603 S.W.2d 575, 580 (Mo. 1980). See also *Woodworth*, 941 S.W.2d at 696; *Seidel*, 764 S.W.2d at 518.

EFFECT OF CERTIFICATION ON CRIMINAL CHARGES

One possible repercussion of juvenile certification that deserves mention, is the fact that once certification has occurred, a prosecutor is not limited to the charges brought forth within the juvenile system. *Scott v. State*, 691 S.W.2d 291 (Mo. Ct. App. 1985) (holding that when the juvenile court waives jurisdiction over a youth to allow prosecution for a particular criminal act in accordance with Section 211.031(3), it is then up to the prosecutor to select the charge to be lodged against the offender, which means to select the statute upon which to base the charge).

In *Scott*, the charge was elevated from first degree murder, to capital murder. *Id.* at 294. The prosecutor is not limited to the charge which the juvenile officer chose to frame the allegation of juvenile court jurisdiction *Id.*

HOW TO FIND YOUR CLIENT

SO, YOU HAVE RECEIVED YOUR APPOINTMENT, DOCKETED THE COURT DATE ON YOUR CALENDAR, AND OPENED YOUR FILE. NOW WHAT? IT IS YOUR OBLIGATION TO MAKE EVERY EFFORT TO CONTACT YOUR CLIENT AND NOTIFY HIM OR HER OF THE COURT DATE, HOW TO REACH YOU AND TO GIVE YOUR CLIENT AN OPPORTUNITY TO MEET WITH YOU BEFORE THE FIRST COURT HEARING. IF YOU ARE APPOINTED TO REPRESENT A PARENT OR A JUVENILE, THE INFORMATION YOU WILL NEED TO LOCATE YOUR CLIENT CAN USUALLY BE FOUND IN THE DOCUMENTS YOU RECEIVE WITH YOUR APPOINTMENT. THE BEST SOURCE OF INFORMATION ON YOUR CLIENT IS THE ONGOING DIVISION OF FAMILY SERVICES SOCIAL WORKER IN CHILD ABUSE CASES AND THE DEPUTY JUVENILE OFFICER, OR THE ATTORNEY FOR THE JUVENILE OFFICER, IN JUVENILE DELINQUENT CASES.

A Petition or an Amended Petition will list the parties and their addresses on the first page.

A Motion to Modify may have your clients' address on the copy list. This address **may not** be the most current or accurate address.

The court order appointing you should also list the address of your client on the copy list, again, this may not be the most current address.

Included in your information packet should be a Judicial Docket Information form. This may or may not include your client's address and phone number.

For child abuse and neglect cases, your packet of information will include a report from the Division of Family Services. With a Petition, the report is the initial investigation of the allegations entitled Protective Custody Assessment. This could be a handwritten form and/or a typed report. The typed report will be prepared for a Detention Hearing. The cover page for both of these documents will include the client's address *at the time of the report*. The Division of Family Services social worker who conducts the investigation of the allegations will not be the social worker assigned to provide services and may not know what the circumstance of your client is at the time you are appointed. If you are appointed following the Pre-trial of the matter, your packet should include a copy of the court report authored by the ongoing social worker and this should include the most current address and phone number at the time of the Pre-Trial hearing. It will also provide you with the social worker's phone number and the social work supervisor's name and phone number. The ongoing social worker should have the most current and accurate information on how to find your client.

If you suspect your client may be in jail, you can call the Municipal Correctional Facility 816-513-9600 or the Jackson County Detention Center 816-881-4200. If your client is incarcerated at a state facility, addresses, directions and phone numbers can be obtained through the Missouri Government website: www.corrections.state.mo.us

In Delinquency and Status cases in which you are appointed to represent the juvenile, you will need to notify both your client and the juvenile's parent(s). The parents' address will be listed on the Petition and in the Judicial Docket Information form. The Petition should also indicate the parent who has custody of the juvenile at the time the case is filed.

If your juvenile client has been placed out of the home, it will be listed on the Detention Order where he or she has been detained. The Detention Order should be included in your packet of information and is a fill-in-the-blank form with handwritten orders signed by the Judge. (Note: if you receive the appointment following the Arraignment, the Detention Order may have changed).

To contact your client at the facility he or she is detained, you can obtain the address, phone number and contact person from the Juvenile Court website www.family-court.org, or call the general court number: 816-474-3606. (Note: it is always a good idea to call ahead to the facilities before attempting a visit in case your client would be unavailable. You can always visit a client in Detention during business hours, except during lunchtime, Noon to 1:00 p.m.) Possible placements for your juvenile client include:

- Detention Facility (816) 474-4700
- Waldron Building (Boys Group Home) (816) 561-0077
- Allegri House (Girls Group Home) (816) 753-2610
- Hilltop Residential Center (Co-ed) (816) 373-5200
- McCune School for Boys (816) 435-7301
- Halfway House Program (816) 881-6550
- Donaldson Building (Intermediate Sanctions Program) (816) 842-7624
- C-Star Drug Treatment Center
- Scott Greening Drug Treatment Center
- A psychiatric hospital inpatient program
- A Foster Home placement

If you have any questions or are unable to make contact with your juvenile client or his or her parent, the assigned Deputy Juvenile Officer (DJO) can assist you. The DJO will be listed on the Court's copy list, the Detention Order, and possibly the Judicial Docket Information form. If there is no DJO assigned, then you can contact the attorney for the Juvenile Officer. Both can be reached by calling (816) 474-3606.

It is important to remember that your client may not have easy access to a telephone, or they may not have a stable address. You may want to obtain an alternative address or phone number of a relative or friend of your client where you can leave a message or send mail if your client moves from his or her present address. Always verify that the Court has the most current and accurate address for the Judicial File, a correct address can be read into the record at a hearing.

Who to Call / Where to get Informal Information Delinquency and Certification Cases

It is critical for an attorney to make contact with the Deputy Juvenile Officer or DJO. DJOs are charged with investigating and assessing the child's entire situation at home, at school and in the community and making recommendations to the Court. Before an evidentiary hearing on a case, counsel should receive a DJO report wherein the investigation/assessment is summarized and the DJO's recommendations are clearly enunciated. If the initial case information does not provide the name of the DJO on the case or if the child has never before been referred to court for delinquent behavior, it is likely that the DJO will be from the **Case Assessment Unit -- 435-4881**. DJOs can also be located at the following unit phone numbers:

- Area 1 Probation 435-7050
- Area 2 Probation 753-0624
- Area 3 Probation 881-8300
- Intensive Supervision 881-6571

It is also critical for an attorney to make contact with the client. Delinquent youth who are either temporarily detained in or ordered to complete a residential facility program can usually be contacted very easily at one of the following locations:

- Detention 435-4700
- FAC/Girls Group Home 753-2610
- FAC Boys 842-7624
- Hilltop Residential 373-5200
- Boys Group Home 561-0077
- Pathway Program 881-6540
- Halfway House Prog. 881-3667
- McCune 796-3887
- Scott Greening 474-7677

Abuse/Neglect and Termination of Parental Rights Cases

In addition to their client, attorneys have many other sources of information in abuse and neglect or termination of parental rights cases.

Attorney for the Juvenile Officer – There are many attorneys who work in the Legal Services Department at the Jackson County Family Court and who are employed as Attorneys for the Juvenile Officer. In any one abuse or neglect case, attorneys may encounter several of the attorneys from Legal Services. Usually, the Attorney for the Juvenile Officer who files the pleading, is not the same as the one who tries the case. However, at any time the Attorney for the Juvenile Officer may have information that you will want or need. **Attorneys in the Legal Unit can be reached at 435-4725.**

Division of Family Services workers -- There are many social service workers employed for the State of Missouri Division of Family Services (DFS). DFS divides social service workers into units and specialties. Attorneys may encounter several workers on one case. In addition, when a particular caseworker is not helpful, attorneys should contact the worker’s supervisor or the social work specialist for the unit.

- South Office 816-325-1023
- Uptown Office 816-889-2336
- Midtown Office 816-929-7800
- Downtown Office 816-889-2313
- Southeast Office 816-889-2203
- East Office 816-325-6042

In some cases DFS may be represented by an attorney. To reach the attorney for DFS, you should call: 816-325-5916

Guardians Ad Litem -- In any case before the Jackson County Family Court in which abuse or neglect is alleged, the child or children will be appointed a Guardian Ad Litem (GAL). **Section 210.160 RSMo.** In Jackson County Family Court juvenile proceedings, the GALs appointed to represent children generally come from three sources:

- The Office of the Guardian Ad Litem 816-435-4870
- CASA (Court Appointed Special Advocate) 816-842-6767
- Attorneys from the general list of available attorneys

The GAL is a party to the action and must be contacted as any other party.

In limited cases, the parents may be appointed a GAL in addition to an attorney. **Section 210.160 RSMo.** outlines the conditions for which an adult may be appointed a Guardian Ad Litem. Children who are represented by CASA and OGAL, and who become parents, will be served by same GAL if a petition is filed regarding the baby. Generally, the Court appoints attorneys from the list of attorneys to serve as GALs for parents. Attorneys appointed as GALs who do not have the experience or training for the job, should first look to the **Supreme Court of Missouri Guardian Ad Litem Standards (enacted September 17, 1996)** for guidance.

Attorneys Representing Other Parents -- Each party is entitled to representation in all proceedings. **Section 211.211 RSMo.** In cases where both parents are “known” and the parent qualifies for appointed counsel there will be more than one attorney. Some cases have multiple parents and each parent is entitled to representation so there may be several attorneys -- either appointed or retained for these blended families. Family members who intervene in a case or agency custodians may have representation, as well. Attorneys who have filed a formal Entry of Appearance will be included on the “copy list” for all pleadings, orders, judgments, etc. In addition, all attorneys must be provided a copy of any pleading, motion or written application to the Court filed by any attorneys in a case. The name of all attorneys (who has filed an Entry) can be accessed from the case information/file at Court. Contact Laura Osterloh in Docketing at 816-435-4727. Also, with the attorneys phone numbers and addresses can easily be found in the local bar directory.

Evidentiary Standards and Discovery Procedures

For the full text of the Jackson County Local Court Rules and the Administrative Orders of the Family Court Division, *see* www.family-court.org/the_law.htm.

Evidentiary Standards

Section 211.171 RSMo and Missouri Supreme Court Rule 117.04 govern the rules of evidence applicable in a Family Court hearing. During the phase of a trial involving adjudication of charges against a delinquent youth, the rules of evidence are basically the same as those applied in a regular, adult criminal trial. However, in the treatment phase or dispositional phase of the “bifurcated proceeding”, a more relaxed approach to the rules of evidence is generally followed. The same differentiation of the rules of evidence applies to cases involving abuse and neglect charges against parents.

The burdens of proof applied in the adjudication portion of proceedings in Family Court are:

- In criminal or delinquent actions “beyond a reasonable doubt”

- In all other cases “clear, cogent and convincing”

The “ best interest of the child” standard *always* applies. See, Sections 211.011 and 1.092 RSMo.

Discovery Procedures

Which rules of discovery apply? Unless otherwise specified, the rules of civil procedure are to apply in juvenile actions in the Family Court. **Missouri Supreme Court Rule 110.04.** However, it has been the practice in Jackson County in cases involving delinquent children (children alleged to have committed a criminal offense) to submit discovery according to the criminal rules of procedure. **Missouri Supreme Court Rule 25.03.** Since it is not clear if the Juvenile Officer is required to respond to discovery in the criminal rules format OR even if the Court will enforce it, attorneys representing delinquent children may first want to speak with the Attorney for the Juvenile Officer on the case and get an agreement on the form of discovery OR an agreement to conduct informal discovery.

In abuse and neglect and termination of parental rights cases, the only acceptable form of discovery is discovery according to the civil rules of procedure. In termination of parental rights cases, however, attorneys may contact the DFS worker to request copies from the DFS file or case record. Theoretically, the attorney representing a parent in a TPR case should have access to anything kept by the Division associated with the case or family. DFS may assert Section 210.150 RSMo as a basis to deny access to certain portions of the file/case record to a particular party. Attorneys may file a motion with the Court requesting complete access to the Division of Family Services file including information about other adults and children if that information would reasonable lead to the discovery of admissible evidence.

Additional Basics:

Filing Documents and Obtaining Subpoenas -- attorneys must file all pleadings, motion, applications with the clerks in Legal Records, located at the Family Justice Center, 625 E. 26Th Street, Kansas City, Missouri, 64108. Attorneys must also use the correct form of subpoena which are obtained from Legal Records.

Possible “pro-active” pleadings, motions, applications to file:

- Motion to Suppress
- Motion to Exclude Parties
- Motion to Dismiss
- Motion for Chapter 207 Evaluation
- Motion to Modify
- Motion to Transfer Jurisdiction
- Motion for Trial Setting
- Motion to Amend Judgment
- Motion for Reconsideration
- Motion for Psychological Evaluation
- Motion for Rehearing
- Motion for Substance Abuse Evaluation.
- Motion to Appoint OR Application to Disqualify a Guardian Ad Litem
- Motion for Detention Review OR Motion for Protective Custody Review

HEARING ETIQUETTE

The Family Justice Center houses both administrative offices and the four Courtrooms in which most of the Family Court hearings are held. These four Courtroom are connected by a very large waiting area which has seating for those waiting to appear in Court.

When you first enter the waiting area please approach the Information Desk and sign in. The sign in sheet enables others to see if you have arrived and enables you to see if others associated with your hearing are present. This can be useful information if you have not yet met with your client or with any other persons associated with your case. If you have not, you may ask the receptionist to page these individuals in order to facilitate a meeting before the hearing.

The large waiting area can be very crowded if all the Courtrooms are in session which makes it very difficult in finding a private or quiet place to discuss matters with your client. Unfortunately, there are not private rooms to meet with your client, attorneys should be aware that attorney-client privilege may be compromised while speaking with a client in the waiting room. The Courtroom area becomes crowded on many days. Speaking with your client prior to arrival at court is advisable to ensure that privacy is maintained as well as keeping the noise level down in the waiting room.

Most hearing in Family Court, Juvenile Division, are closed to the public. Due to the private nature of the hearings, persons are not allowed to wander in and out of the Courtrooms while they are in session. For this reason, it is important to arrive early and locate all other parties involved in your hearing. The Commissioners and Judge are aware, however, that often attorneys have busy schedules and will from time to time be late in arriving due to a conflict. If this appears to be a possibility, in addition to letting your client know you will be late, you should call in advance of the hearing to the division clerk and the attorney for the juvenile officer and give them the information and approximate time you can be available.

A Commissioner or Judge is assigned to each courtroom. They are assisted by a bailiff or court reporter. Only the Judge in Courtroom A has a court reporter. The bailiff is responsible for tape recording the proceedings in the other courtrooms. The Sheriff may also be in the courtroom.

The attorney for the juvenile officer will also be present in the Courtroom along with his or her paralegal. This paralegal may periodically leave the Courtroom to ensure that the parties are ready on the next case. Either the Attorney for the Juvenile Officer or the paralegal will call the case into court, typically using the name of the child or children. In order to make this process go more smoothly, please make sure your presence is known to your parties and sit nearest the Courtroom in which your hearing will be held, if possible.

Each Courtroom has one large table. There is additional seating and a podium. The attorney for the juvenile officer may stand behind the podium and attorneys, parents and children sit at the table. Some Judges or Commissioners may require the use of the podium by any attorney questioning any witness.

In juvenile delinquency proceedings, the child should sit at the first seat on the left hand side of the table and the child's lawyer should sit in the chair to the right. Parties to the case (parents and legal custodians) and their attorneys are also seated at counsel table in delinquency matters. In abuse and neglect matters, all parties and counsel sit at counsel table, with parents and their counsel in the first seats. Case workers are afforded seats at the table if there are enough chairs. Microphones are placed on the table for recording purposes; therefore it is important to speak clearly and loudly to be heard by the judiciary as well as to be recorded.

When the case is called, and due to the private nature of the case, persons attempting to enter the Courtroom may be questioned regarding their relationship to the case. Generally,

anyone who is not a party to the case will be excluded. If there is a specific reason for any individual not a party, to be in the Courtroom, counsel should make the Court aware of the reason and the person's identity upon entering.

Once all parties are seated the case will be called by the Attorney for the Juvenile Officer who will typically announce the names of all in the courtroom. And the case will proceed. During the hearing, when presenting evidence or examining a witness, it is not always necessary to stand. If you are in doubt as to the Court's preference, the Court will entertain your questions regarding procedures. All adults should be referenced by first and last name or with proper titles. At the close of the case and at any time an attorney is making a recommendation, the attorney should stand.

These hearings are bench trials, tried to a judicial officer without a jury. In the usual course, parties do not present an Opening Statement or Closing Argument. If you feel that it is a necessary tactic, you should make the Court aware of your desire to do so.

Once the presentation of evidence is completed the Commissioner or Judge will give each attorney or party an opportunity to make a recommendation. Attorneys are expected to stand when doing so. This recommendation can be in the form of an argument but should be relatively short in duration. It is common for the Commissioner or Judge to ask questions of witnesses while they are testifying or at the end of all of the recommendations.

Once all parties have had the opportunity to give a recommendation and the Court has finished any follow up questions, the Commissioner or Judge will usually give a statement of his or her findings. At this time the hearing is complete and you may leave the Courtroom.

Confidentiality—Juvenile Delinquency

In recent years, the confidentiality of records of juvenile offenders has been significantly changed to allow the general public and other interested persons more access to certain records.

Supreme Court Rules 1221.02, 122.03 and 122.04 and Section 211.321 RSMo. govern the release of juvenile records to the general public. These particular sections address two general types of records—those within the possession of the court and/or Juvenile Officer and records of juveniles maintained by law enforcement agencies.

Records in the Possession of the Court and/or Juvenile Officer:

The law provides that records of juvenile court proceedings as well as any information obtained and social records prepared as part of carrying out official duties for the court are generally confidential and only can be open to inspection under certain circumstances. However, there are specific exceptions.

The Juvenile Officer has the discretion to provide information or discuss matters concerning the juvenile with the victim, witnesses, school officials, prosecuting attorneys, law enforcement officials, any persons having care, custody or control of the juvenile, and any person or agency providing treatment to the juvenile without a specific order of the court.

Within the Sixteenth Circuit, Deputy Juvenile Officers frequently share information regarding the juvenile and the juvenile's conditions of probation or commitment with members

of schools, police officers, and others as part of multi--disciplinary teams whose individual members work together to assure the juvenile's compliance with treatment needs and conditions of probation.

The Juvenile Officer can release information to the public regarding juvenile offenses, the substance of the petition, and other matters as the Juvenile Officer deems appropriate as long as such information does not generally identify the juvenile or the juvenile's family. Within the Sixteenth Circuit, the Juvenile Officer does release such information to members of the press or the general public consistent with the provisions under Section 211.321 RSMo.

After a juvenile has been adjudicated for a felony offense, the records of the dispositional hearing and proceedings are open to the general public except for records that have been sealed by order of the court. However social summaries, investigations and records in the nature of pre-sentence investigations remain confidential and can only be opened to inspection by order of the court. (This is part of the Juvenile Crime Bill of 1995.)

Within the Sixteenth Circuit, any member of the general public may submit a written request, by fax or regular mail, for information concerning adjudicated offenses which would be felonies if the juvenile was an adult to:

Judicial Records
Family Justice Center
625 E. 26th St.
Kansas City, MO 64108

Identifying information for the juvenile in question must be included in the request. Only information for felony offenses, which occurred on or after August 28, 1995, is released to the public under this provision. Information concerning misdemeanor offenses cannot be released.

Records of juvenile adjudicated offenses which would be felonies if the juvenile was an adult, are released to probation officers for purposes of preparing a pre-sentence report in a criminal matter.

By administrative order of the administrative judge of the Family Court Division, records of juveniles may be released by the Juvenile Officer, without any further order of the court, to:

District or Prosecuting attorneys concerning sustained acts of delinquencies which would constitute felonies if the juvenile was an adult, for the purpose of determining the legal status of the juvenile under the law of the state making such request.

Military recruiters, with the written consent of the juvenile and the juvenile's parents if the juvenile is seventeen years of younger, including all records of referrals and filed charges including the disposition of the charges.

Insurers of victims, the identities of juveniles charged or taken into custody for delinquent offenses and the identities and addresses of the juvenile's parents and the disposition of the referral or filed charges.

Victims, victims' attorneys, victims' insurers concerning copies of any police reports in the Juvenile Officer's possession.

In all other cases, records and information may only be open to inspection to persons having a legitimate need by order of the juvenile judge. Persons must submit a written application to the administrative judge of the Family Court Division requesting permission to have access to the records in questions specifically stating the reasons for the request.

Records in the Possession of Law Enforcement Agencies

Section 211.321.2 RSMO. and Rule 122.02 provides that juvenile records maintained by law enforcement agencies are to be kept separate from records of adults and are not to be opened to the general public except:

When a juvenile is transferred to a court of general jurisdiction.
For the purpose of pursuing civil forfeiture under Section 195.140 RSMo.
Upon order of the juvenile court judge.

Records in the Possession of Law Enforcement Agencies Released by Administrative Order

In the Sixteenth Circuit, the administrative judge of the Family Court Division has authorized the release of certain juvenile records held by law enforcement agencies by administrative order. This administrative order applies to all law enforcement agencies operating within Jackson County, Missouri with the exception of federal agencies. Below are the situations that permit the release of juvenile records in the possession of law enforcement agencies without further order of the Court:

Records involving a juvenile suspect or victim may be released to any person, attorney for a person or the insurer of a person involved in any incident or whose property is involved in an incident for purposes of the investigation of any civil claim or defense.

Records involving juvenile suspects of victims may be released to the Missouri Crime Victims Compensation Fund when a claim has been made upon the fund.

Records and information may be shared by law enforcement agencies with members of multi-disciplinary teams formed to address issues of the welfare of children including juvenile delinquency.

Information regarding juvenile suspects may be shared with school districts as part of a multi-disciplinary effort to reduce juvenile crime. Law enforcement agencies operating in Jackson County may provide police reports to school districts concerning delinquent behavior of juveniles when the delinquent acts are alleged to have been committed on the school district property or upon a bus used to transport students.

Sealing and Destruction of Records

Under Section 211.321 RSMo., records of juvenile offenses may be sealed or expunged under certain circumstances. Motions and requests for the destruction and/or sealing of records

should be filed within the Family Court Division. Copies of all such requests are sent to counsel for all parties for any objections to be filed.

All orders for the sealing and destruction of records are treated as final, appealable judgments. Records are not destroyed or sealed until forty-five days after the entry of the judgment; however, if an appeal has been filed, records are not destroyed or sealed until after the mandate is received from the appellate court.

**OUTLINE OF STATUTORY PROVISIONS AND DFS POLICIES
PERTAINING TO RELEASE OF INFORMATION FROM DFS TO
PARENTS' ATTORNEYS**

The ability of DFS to produce information regarding its cases is set forth in Section 210.150 R.S.Mo.

Pursuant to Section 210.150 R.S.Mo., parent's attorneys will receive information from DFS files as follows:

- a) The Division requires 10 days to comply with a request for information;
- b) One copy will be provided free of charge;
- c) The parent's attorney may make the request for information to either the assigned worker, that worker's Social Service Supervisor I, or that worker's Program Manager;
- d) The Division requires that the request for information be written;
- e) The Division requires that the request be accompanied by a written release from the parent or an Order of Court appointing the attorney to represent said parent.

Note limitations to release of information to attorneys representing parents:

- a) The Division requires that the request for information be written;
- b) So long as criminal charges are pending with regard to the person requesting records, and until the information is filed or the indictment is returned, DFS records will not be given to an alleged perpetrator of abuse (even if the parent). Section 210.150.1(5)R.S.Mo.
- c) The names of child abuse hotline reporters will not be given to the parent. Section 210.150.1(4) R.S.Mo.
- d) DFS records will not be released, even to a parent, if the Division determines that the release of such information may place a person's life or safety in danger. Section 210.150.1(4) R.S.Mo.
- e) The Division cannot release Family Court records. Section 211.321 R.S.Mo.
- f) Section 210.150 R.S.Mo. does not authorize release of information regarding one parent (psychological evaluations, therapy reports, physical exam reports, etc.) to the other parent. The statute limits the release of information to that which is pertinent to the *child*.

Parents, as well as DFS employees, attorneys or other persons involved in the Court case may be held criminally liable for unauthorized release of information pursuant to Section 210.150.4 R.S.Mo.

The mere fact that a hotline report was made is not admissible in many cases pursuant to Section 210.145.14 R.S.Mo. (Of course, the underlying facts which may have led to the hotline call remain admissible.)

Attorneys representing adoptive petitioners who are seeking to terminate parental rights within the context of an adoption action are not entitled to information on the biological/legal parents of a child. This information must be sought via discovery (Request for Production, etc.). Such discovery should be served on the DFS worker and the Division of Legal Services, 103 N. Main, Suite 200, Independence, Missouri 64050.

An Alternate Source of Information

Attorneys representing parents may review the Family Court's Legal and Social Files. The Social Files will often contain much of the same material as is included in DFS files, but cannot be relied upon because they are not supplemented in a consistent fashion.

In the Circuit Court of Jackson County, Missouri
Family Court Division

In Re the Interest of: _____,
(Date of Birth).

Petition No.: _____
Life No.: _____

Stipulation On Costs

Come now Nancy J. Melton, Attorney for the Division of Family Services, and _____, attorney for _____, and stipulate and agree as follows:

1. _____ was appointed by the Family Court Division, Circuit Court of Jackson County, Missouri, to represent the natural mother/father in the above captioned termination of parental rights case.
2. At the time of the termination of parental rights action, the Division of Family Services either had or received legal custody of the above referenced child.
3. _____ now requests that his/her attorney fees for trial in the amount of \$_____ (_____ 10 hours at \$75.00 per hour and _____ hours at \$50.00 per hour) and expenses in the amount of \$_____ for a total of \$_____ be assessed against the Division of Family Services, as costs, pursuant to Section 211.462 R.S.Mo., and paid to him/her.

WHEREFORE, the undersigned do jointly stipulate and agree that an Order of this Court issue assessing attorney fees in the amount of \$_____ against the Division of Family Services and in favor of _____.

Respectfully Submitted,

Signature block for appointed Attorney

Nancy J. Melton
MBA #25091
Division of Legal Services
103 N. Main, Suite 200
Indep., Mo. 64055
(816) 325-5916
Fax: (816) 325-6023

**In the Circuit Court of Jackson County, Missouri
Family Court Division**

IN THE INTEREST OF:		
NAME:		Petition No:
SEX:		Life No.:
BORN:		

ORDER

On this ____ day of _____, _____, this matter coming on for award of attorney's fees and expenses to (Name of Attorney), attorney for mother, and the parties stipulating and agreeing.

IT IS HEREBY ORDERED AND DECREED that (Name of Attorney) shall be awarded attorney's fees and expenses in the amount of one _____, (\$) which shall be taxed as costs.

Costs are assessed against the Division of Family services for which execution shall issue.

J. D. Williamson, Jr., Family Court Judge

Dated this _____ day of _____, _____.

CERTIFICATE OF SERVICES

A copy of the foregoing instrument was mailed by me, via U.S. Mail postage prepaid this ____ date of _____, 1998, to:

NAME OF ATTORNEY MO BAR #
ADDRESS
CITY STATE ZIP
PHONE NUMBER

Nancy J. Melton MO Bar #25091
Division of Legal Services
Attorney for DFS
103 N. Main, Ste 200
Independence, MO 64050
(816) 325-5916

Alternative Dispute Resolution

Alternative Dispute Resolution is beginning to make its way into the field of Juvenile Law. Mediation and the use of special masters have been used in Family Court in Jackson County. Additionally, the use of conflict managers has been used in Jackson County Domestic matters and protective orders. Meetings held by the Division of Family Services may utilize family conferencing or other facilitative methods to increase effective teamwork at their meetings. At this time mediation is the most widely used tool to help parties resolve issues without a lengthy trial.

Mediation may be used in victim/offender programs as a rehabilitative tool for both the adjudicated juvenile and the victim of the offense. In child abuse and neglect matters, mediation is also being used to develop parenting plans prior to the release of children from jurisdiction after the parents have reunified with the children, but are not living together. Additionally, mediation is being used to facilitate permanency planning for children prior to and after the filing of termination of parental rights.

Other methods of dispute resolution such as special masters, conflict managers and family conferencing are being utilized across the United States in the child abuse/neglect areas to facilitate case management and family participation so as to hopefully shorten the time the children remain in temporary placements.

CONSTITUTIONAL RIGHTS OF JUVENILES IN FAMILY COURT

YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT ALL JUDICIAL HEARINGS.

YOU HAVE THE RIGHT TO A TRIAL BY A JUDGE OR A COMMISSIONER REGARDING THE ALLEGATIONS AGAINST YOU.

YOU ARE PRESUMED INNOCENT UNTIL PROVEN GUILTY.

YOU HAVE THE RIGHT TO BE PRESENT AT THE TRIAL.

YOU HAVE THE RIGHT TO SEE AND HEAR YOUR ACCUSERS AND WITNESSES AS THEY ARE TESTIFYING AGAINST YOU UNDER OATH. THIS IS YOUR RIGHT OF CONFRONTATION.

YOU HAVE THE RIGHT TO QUESTION THE WITNESSES OR ACCUSERS THROUGH YOUR ATTORNEY TO ASK THEM QUESTIONS TO TEST THEIR HONESTY AND TO BRING OUT INFORMATION HELPFUL TO YOUR SIDE OF THE CASE. THIS IS YOUR RIGHT TO CROSS EXAMINE WITNESSES.

YOU HAVE THE RIGHT TO PRESENT EVIDENCE OF YOUR OWN AT TRIAL.

YOU HAVE THE RIGHT TO SUBPOENA ANY DEFENSE WITNESS YOU WANTED TO CALL AT TRIAL. IF THE WITNESS DID NOT WANT TO APPEAR AT COURT YOU HAVE THE RIGHT TO USE THE COURT TO FORCE THEM TO APPEAR AT COURT TO TESTIFY ON YOUR BEHALF.

YOU WOULD HAVE THE RIGHT TO REMAIN SILENT AT TRIAL AND THE COURT AND THE PROSECUTOR COULD NOT MAKE ANY ASSUMPTIONS FROM YOUR SILENCE REGARDING YOUR GUILT OR INNOCENCE.

YOU WOULD ALSO HAVE THE RIGHT TO TESTIFY AT TRIAL IF YOU WANTED TO TELL YOUR SIDE OF THE STORY.

YOU WOULD HAVE THE RIGHT TO HAVE THE ALLEGATIONS ESTABLISHED WITH PROOF BEYOND A REASONABLE DOUBT AT TRIAL.

YOU WOULD HAVE THE RIGHT TO ASK FOR A NEW HEARING OR FOR A NEW TRIAL IF SOME ERROR OCCURRED DURING THE TRIAL BY MAKING AN APPEAL TO A DIFFERENT COURT.

DELINQUENCY ADMISSION CHECKLIST

1. Name
2. Date of Birth
3. Address
4. With whom do you live?
5. What members of your family are here today?
6. Within in the last 48 hours have you had any alcohol, narcotics or drugs?
7. Have you ever been diagnosed with a mental disease or defect?
8. What school do you attend?
9. What grade are you in?
10. Do you understand the English language?
11. We are here today because the Juvenile Officer has filed a petition (motion to Modify) alleging that you have committed what would be a crime if you were an adult. Before you admit to the allegations the court needs to know that you understand all your legal rights.
12. Do you understand that you have a right to a trial by a Judge on the allegations, and that at trial it would be the responsibility of the Attorney for the Juvenile Officer to prove beyond a reasonable doubt that you did these things?
13. Do you understand that at trial you would have the right to be represented by an attorney, and that I would represent you at trial?
14. Do you understand that at the trial the Attorney for the Juvenile Officer would bring in people as witnesses to prove these allegations, and that you would have the right through your attorney, to ask these witnesses questions that would aid in your defense of the matter?
15. Do you understand that at trial, you would be presumed innocent until proven guilty beyond a reasonable doubt?
16. Do you also understand that you would have the right to remain silent at trial and the court could not use your failure to testify against you in deciding your guilt?
17. Do you also understand that you would have the right to subpoena witnesses in order to present your defense and that we could use the power of the court in order to make sure that they come to court?

18. Do you understand that at the conclusion of the matter if the Judge found that you were guilty of the charges you could ask another court to review the matter if there were errors committed in the trial?
19. Do you understand that if you make an admission today you would be giving up all of these rights and all that will be left is for the Judge to enter an order of disposition in the matter; that you would not have a trial and you could not appeal your case to a different court?
20. Do you understand that the Judge is not bound by any recommendation that is made by your Deputy Juvenile Officer, the attorney for the Juvenile Officer or by myself?
21. Has anyone made any threats or promises to you regarding your admission to the allegations?
22. Do you understand that you do not have to admit that you did anything?
23. With the knowledge of all these rights do you want to admit today?
24. Did you have an opportunity to speak with your parents regarding making an admission today?
25. Did you have enough time to talk with me about making the admission?
26. Was there anything that you wanted me to do that I failed to do?
27. Was there anything that I did that you did not want me to do?
28. Are you making this admission today because you committed the act(s) which have been alleged?
29. Count _____ alleges
30. Tell the court in your own words what happened.