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# Practice in Cuyahoga County Juvenile Court

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## *Practice in Cuyahoga County Juvenile Court*

*Ronald J. Harpst\**

UNFAMILIARITY HAS CAUSED MANY ATTORNEYS to avoid Juvenile Court cases. Many times attitudes of avoidance have developed from the mistaken belief that Juvenile Court is a protective social agency rather than a court of law. In the early days of the Court, hearings were almost exclusively concerned with child delinquents under sixteen years of age, which gave rise to the misconception that defense counsel were unnecessary. Subsequently, the statutes of the State of Ohio were amended, raising the jurisdictional age to eighteen, extending jurisdiction to neglected and dependent children, and giving widened powers over adult contributors.

By avoiding Juvenile Court cases, the attorney not only deprives himself of many cases, but neglects a primary social and professional responsibility.

The purpose of this paper is to acquaint the practicing attorney with "bread and butter" practices and procedures of Juvenile Court and to dispel misconceptions as to the status of practice in that court.

### **History of Cleveland's Juvenile Court**

Juvenile Court legislation derives from two sources of the English common law: First, the jurisdiction of the courts of equity or chancery, exercised to protect those unable to care for themselves; and second, the rule that children under seven years of age are incapable of committing crime.<sup>1</sup> Some of the leading states in passage of Juvenile Court legislation have been Massachusetts, Illinois, Colorado and Ohio.

Newton D. Baker, while serving as City Solicitor of Cleveland at the turn of the century, brought the problem of juvenile courts to public attention as a result of his investigations into the conditions for quartering child offenders and the types of punishment handed down in dealing with juveniles. Mr. Baker was shocked to find that only slight concessions were given in

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<sup>1</sup> Report on Juvenile Court Administration, National Conference on Prevention and Control of Juvenile Delinquency, Nov. 20-23, 1946, U. S. Govt. Printing Office, (Washington, 1947), p. 1.

favor of the child offender. Adolescent children were quartered with hardened criminals, vagrants, women of the street, and homosexuals. With the aid of a group of progressive citizens, known as the Sociology Club, Mr. Baker formed a committee to study the problem more thoroughly and to suggest possible improvements. After exhaustive study the committee sponsored a bill in the Ohio Legislature which led to the establishment of the Cuyahoga County Juvenile Court in 1902. This first Ohio Juvenile court was established as part of the old Insolvency Court.<sup>2</sup>

The chief object of the original Juvenile Court Law was to remove young offenders from the contaminating influence of confinement in police stations and jails. The Act bore little resemblance to the modern statutes and was limited to Cuyahoga County and to children under sixteen. There were no provisions for probation officers. In 1903 the constitutionality of the Juvenile Court was challenged in Common Pleas Court. Judge George L. Phillips rendered one of the most remarkable decisions ever handed down from a local bench. He declared, in effect, that the Court had little or no legal standing, but that it was doing a noble and effective piece of work and had turned a useless court into an instrument of great good. Thus, somewhat uncertainly, on the ground of public policy rather than law, the Court was upheld.<sup>3</sup>

In 1913 the jurisdictional age of the Court was raised to its present level of 18 years and the Court's powers and limitations were clearly defined.<sup>4</sup>

In an effort to chart avenues for further improvement, the Criminal Justice Survey was commissioned, and in 1922 Roscoe Pound and Felix Frankfurter undertook the task of studying and recommending needed changes in the administration and jurisdiction of Juvenile Court. These proposals later were carried forward by Judge Harry L. Eastman when he became Administrative Judge of the Court.

In 1929 the Child Support Department was annexed to the Court as an instrument for supervising and enforcing the payment of support for dependent and neglected children of the

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<sup>2</sup> Eastman, *Practice in the Juvenile Court*, Cleve.-Bar Assoc. J., Dec. 1941 and Jan. 1942, Reprinted in *Cuyahoga County Probation Officers Manual*, pp. 1-7.

<sup>3</sup> *Annual Report of Cuyahoga County Juvenile Court*, 1952, p. 6.

<sup>4</sup> Eastman, *supra*, n. 2, p. 2.

county.<sup>5</sup> A new court building was approved in 1930 and completed in 1932. The year 1935 brought forth a statute recognizing the autonomy of Juvenile Court.

Since its inauguration in 1902 the court has made numerous additions to the services it offers to youthful offenders. Boys' and Girls' Referees have been established, as well as a Traffic Referee to handle traffic cases involving juveniles. Many services throughout the county have been correlated in order to take referrals from the Court and to aid in the disposition of cases in the best interests of the family groups. Judge Albert Woldman is the present Administrative Judge of the Court.

### Purpose of Juvenile Court

The basic task of the Court is to safeguard and protect the welfare of the community and the delinquent child. In protecting the child, the court does not intend to shield him from responsibility for or consequences of his acts. It aims to secure all services available in order to achieve the healthy development of the child and the greatest opportunity for his becoming a good citizen. In each case the Court's obligation is to approach the problem in the best interests of the child and of the community.

The Ohio view of the operation and purpose of Juvenile Court is laid out in 24 *Ohio Jurisprudence*, Juvenile Court, Section 5:

The Juvenile Court law is in accordance with the trend of the best modern sociological and juristic thought. Its purpose is to save minors of tender years from prosecution and conviction on charges of misdemeanors and crime, and to relieve them from the consequent stigma attached thereto; to guard and protect them against themselves and evil-minded persons surrounding them; to protect and train them physically, mentally and morally. It seeks to benefit not only the child, but the community also, by surrounding the child with better and more elevating influences and training in all that counts for good citizenship and usefulness as a member of society. Under it, the state, which through its appropriate organs is the guardian of the children within its barriers, assumes the custody of the child, imposes wholesome restraints, and performs parental duties, at a time when the child is not entitled either by the laws of nature or of the

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<sup>5</sup> Annual Report of Cuyahoga County Juvenile Court, 1952, p. 13.

state to absolute freedom, but is subjected to the restraint and custody of a natural or legally constituted guardian to whom it owes obedience and subjection. It is of the same nature as statutes which authorize compulsory education of children, the binding of them out during minority, the appointment of guardians and trustees to take charge of the property of those who are incapable of managing their own affairs, the confinement of the insane, and the like. The welfare of society requires and justifies such enactments. The statute is neither criminal nor penal in its nature, but an administrative police regulation. It is not the purpose of the act to punish the child, but to take it out of an environment which, if continued, would result disastrously to it as well as society, and thereby create a standing menace to the state, and to supply it with opportunities for good moral training and physical comforts and support."

This definition was set out primarily to apply to Ohio Juvenile Courts, but has embodied in it the philosophical implications of the Standard Juvenile Court Act and the ideas set forth by the Association of Juvenile Court Judges of America.

Roscoe Pound laid out the essential philosophy of the juvenile court in two words, "individualized justice."<sup>6</sup> This means that the court "recognizes the individuality of a child and adapts its orders accordingly,"<sup>7</sup> that it is a "legal tribunal where law and science, especially the science of medicine and those sciences which deal with human behavior, such as biology, sociology, and psychology, work side by side,"<sup>8</sup> and that its purpose is remedial and preventive rather than punitive. This purpose requires procedures designed for individual study of the child and his problem as well as protection of the legal and constitutional rights of both parents and child.<sup>9</sup>

### Practice and Procedure

The Ohio Revised Code provides that children's cases shall be conducted in an informal manner, without jury, to the ex-

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<sup>6</sup> Society's Stake in the Offender, National Probation Association Yearbook, 1946, (New York, 1947), pp. 6-18.

<sup>7</sup> Schramm, Philosophy of the Juvenile Court, Annals of Amer. Acad. Pol. and Soc. Science, (Washington, 1949), pp. 101-108.

<sup>8</sup> Lou, Juvenile Courts in the United States, Univ. of No. Car. Press, (Chapel Hill, N. C., 1927), p. 2.

<sup>9</sup> Standards for Specialized Courts Dealing with Children, prepared by Children's Bureau, U. S. Dept. Health, Educ. and Welfare, U. S. Govt. Printing Office, (Washington, 1954), p. 2.

clusion of the general public, and heard in a separate room, apart from the criminal court. Secs. 2151.24, 2151.35, R. C.

Informality is a necessary factor. "Close adherence to the strict rules of evidence might prevent the court from obtaining important facts as to the child's character and condition which could only be to the child's detriment."<sup>10</sup> As a necessary complement to the informality of the court's hearings, the State granted to the court broad and discretionary powers in the disposition of children's cases. Sec. 2151.55 R. C.

### Children's Cases

The Juvenile Court has exclusive and original jurisdiction, in children's cases, concerning:

1. Juvenile traffic offenders.
2. Delinquent children.
3. Neglected children.
4. Dependent children.
5. Crippled or otherwise physically handicapped children.
6. To determine the custody of a child not a ward of another court.
7. To determine the paternity of a child (bastardy).<sup>10a</sup>
8. To provide for custody, care, and support in cases certified to it after divorce is granted. Sec. 2151.23 R. C.

A *child* is defined by the Revised Code as being anyone under 18, except crippled or physically handicapped children, where the age runs to anyone under 21. Sec. 2151.01 R. C.

A *delinquent* is one who:

1. Violates any law.
2. Is incorrigible, uncontrollable, wayward, or habitually disobedient.
3. Is an habitual truant from school or home.
4. Deports himself so as to endanger morals or health of himself or others.
5. Attempts to marry without parental consent. Sec. 2151.02 R. C.

<sup>10</sup> Whitlatch, *The Lawyer in the Juvenile Court*, Cleve. Bar Assoc. J., April 1950 (Reprint), p. 2.

<sup>10a</sup> Jurisdiction in Paternity Cases is Concurrent with other Courts. Ohio Rev. Code, Sec. 2153.23.

A *juvenile traffic offender* is one who:

1. Violates any traffic law and who may be designated a delinquent by order of the court after hearing the evidence. Sec. 2151.021 R. C.

A *neglected child* is one who:

1. Is abandoned.
2. Lacks parental care through parental fault.
3. Is refused necessities of life or education by parents.
4. Is refused special care, made necessary by his mental condition, by his parents.
5. Is found in a disreputable locale or in bad company.
6. Works at forbidden employment. Sec. 2151.03 R. C.

A *dependent child* is one who:

1. Lacks parental care without parental fault.
2. Lacks parental care by reason of the mental and physical condition of his parents.
3. Whose condition or environment warrants the state assuming guardianship, in the best interests of the child. Sec. 2151.04 R. C.

*Parental Care* is said to be lacking when:

1. The home is unsanitary.
2. The child is permitted to become dependent, neglected or delinquent.
3. Able parents refuse or neglect to provide the child with necessities of life or education.
4. Parents fail to subject the child to proper discipline. Sec. 2151.05 R. C.

The *residence* of the child is that of the parents when the parents are together; when parents have different residences, residence of the child is that of its legal guardian or person in loco parentis. Sec. 2151.06 R. C.

The youthful offender is brought before the Court, not as having committed a felony or a misdemeanor, but as a *delinquent child*. This term is an outgrowth of the English common law rule that a child of tender years is incapable of forming a criminal intent; such intent being necessary for many felonies and mis-

demeanors. The statutes, in providing this distinction, recognize the youthful offender's need for correction and discipline.

The Revised Code provides that no child shall be charged with or convicted of a crime in any court, not even in Juvenile Court, unless the act would be a felony if committed by an adult. The Juvenile Judge may, after investigation of facts and mental and physical examination, bind the child over to the Common Pleas Court. Sec. 2151.26 R. C. Such procedure is undertaken only when the youthful offender has committed a serious crime and is 16 years of age or older.<sup>11</sup>

When a child is arrested, even for a felony, the child must be taken directly before the Juvenile Court. No other court shall entertain the matter. When the child is delivered to Juvenile Court all further proceedings in other courts are discontinued and deemed to be entered upon the complaint filed in Juvenile Court. Sec. 2151.25 R. C.

Any person having knowledge of a child appearing to be a delinquent, neglected, dependent, or crippled may file a sworn complaint. Sec. 2151.27 R. C.

On being consulted as to the filing of a new complaint the attorney should, if possible, convey his client to the Intake Department of Juvenile Court. The Intake Officer then will interview the complainants and decide what action to take as to whether the child will be filed on officially or unofficially, or whether the filing will not be accepted. If accepted the case will be docketed and the proper citations will be issued. In the case of the complaint not being accepted the intake officer may refer the situation to a social agency, particularly in neglect cases, where an agency is empowered to investigate situations of neglect and to offer services therein. The Intake Officer also may advise the child or parents or give them a warning or admonishment.

The complaint shall be sufficiently definite if it simply uses the words "delinquent," "neglected," "dependent," "crippled" or "physically handicapped." Sec. 2151.27 R. C.

### Referees

The Referees in Juvenile Court hear all unofficial cases (delinquency, neglect, non-support, traffic), hear and recommend disposition of assigned official cases (delinquency, dependency,

<sup>11</sup> Whitlatch, *op. cit. supra*, n. 10, p. 2.



neglect), and conduct preliminary hearings in bastardy cases. The Traffic Referee also considers applications for return of drivers' licenses.

The Referee has the usual powers and duties of masters in chancery cases. Upon his hearing the case, he submits his findings and recommendations to the Court, who may make the order recommended by the Referee or any other order required, or may set aside the findings and hear the case anew. The Referee, on making his finding, immediately notifies the parties, thereby affording them the opportunity of a rehearing. The parties may agree to the findings and waive rehearing or have the case made official and docketed before the Court. Sec. 2151.16 R. C.

The Traffic Referee, a relatively new functionary of the Court, hears and disposes of juvenile traffic cases. He points out the responsibility of the driver for being acquainted with and adhering to the existing laws and ordinances. If instruction in vehicle operation or in knowledge of regulations is necessary, parents are directed to arrange for this for their child. Usually the youthful offender is disciplined by surrendering his operator's license for a specified period.

### **Disposition of Delinquency Cases**

In hearing and disposing of children's cases, the Court first has the legal responsibility of determining that the complaint of delinquency has been substantiated. In order to do this, all those persons having an interest in the case are required or permitted to be present. The complainant then presents his evidence. If the child disputes the evidence he is asked to present his version of the occurrence, or the Probation Officer will present it as the child related it to him on investigation. Witnesses, if any, are then heard to substantiate statements of either complainant or child. If the child has employed an attorney, he may examine either party and witnesses. The Juvenile Judge also may examine and ask questions, to satisfy himself as to the true facts. Upon establishing the delinquency, the Judge refers to the investigation report of the Probation Officer.<sup>12</sup>

Ohio Revised Code Secs. 2151.14 and 2151.15 set forth the powers and duties of the Probation Department. Probably the most important function of the Probation Officer in terms of disposition of children's cases is his pre-trial investigation. The Probation Officer is assigned, in terms of geographical area, to a case

<sup>12</sup> Eastman, *op. cit.*, supra, n. 2, p. 4.

involving a youthful offender approximately two weeks prior to the time of the hearing. His function basically is to investigate and make a "family history," which includes personal histories of both parents, a health history of all members of the family, financial situation of the family, religious affiliation, home and neighborhood conditions, relationships among members of the family group, and attitudes towards present situation. The Probation Officer then interviews the child and obtains a "delinquency history." This consists primarily of the charge, place of detention, group involved, appearance and health of the child, personality, educational and employment history, leisure time interests, attitude towards present situation, and the child's version of the present situation. After gathering this material the probation officer interviews the complainants in order to ascertain damages, if any, and their version of the happening. He also contacts police and school authorities in order to ascertain other pertinent details. The family history is attached to health, intelligence, and other agency reports submitted to the Juvenile Judge as aids in disposing of the matter in the best interest of the child. The Judge, after reviewing the report, discusses with the family, their legal representative and the Probation Officer pertinent factors and their possible bearing on the conduct of the child. From these discussions a plan for treatment is made and the order of the Court is entered in conformity with that plan.

The records and reports of the Probation Department are confidential and shall not be made public. Sec. 2151.14 R. C. Such records shall be open only to those who have legitimate interest in the matter, such as social agencies considering referrals. The reports used in connection with this action shall, for good cause shown, be made available to any attorney representing any child or its parents, upon written request prior to the hearing. Sec. 2151.35 R. C.

The disposition of a child or evidence given in Juvenile Court shall not be admissible as evidence against the child in any other court. Sec. 2151.35 R. C.

The attorney, on accepting a delinquency matter, should:

1. Contact his client and make his investigation.
2. Contact the Probation Officer and correlate the two investigations as to pertinent details.
3. Discuss possible plan of rehabilitation in the light of the correlated investigations of the client's age, intelligence, past rec-

ord, family history, social adjustment, school history, attitudes of client and parents.

4. Discuss plan of rehabilitation with client and parents, pointing out the trends of the Court in like matters and what is best for the child. In other words, sell the parents on the workability of the plan.

The Probation Officer can be of great value to the attorney in helping him to prepare a workable plan with understanding of court trends and social implications. Preparation of a workable plan of rehabilitation is persuasive to the Juvenile Judges and expedites the business of the court.

John Mayar, Director of Social Services, Cuyahoga County Juvenile Court, and member of the Ohio Bar, has said that

One of the most potent of all resources in the community available to the juvenile court is the lawyer . . .

The reason for the lawyer's unique potentialities in the juvenile court, particularly in a delinquency case, is readily discernible. Parents are oft-times more frightened, shocked and worried than the child. They feel certain that the police were in error in arresting their child. They are fearful that the court will be hostile and expect it to wreak vengeance upon them. They have no idea as to what to do, but they know they have a friend in their lawyer . . .<sup>13</sup>

### Adult Cases

The Juvenile Court has original jurisdiction, but not exclusive jurisdiction, to determine misdemeanors charging adults with:

1. Contributing to the delinquency, neglect or dependency of any child.
2. Encouraging the delinquency, neglect or dependency of any child.
3. Tending to cause the delinquency, neglect or dependency of any child.
4. Violation of any state or city law respecting children.
5. Desertion, abandonment or failure to provide subsistence to any child for which he is legally responsible.
6. Bastardy cases. Sec. 2151.23 R. C.

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<sup>13</sup> Mayar, *The Lawyer and Social Services in the Juvenile Court*, Cleveland Bar Assoc. J., May 1958, p. 112.

The term *adult* includes any person eighteen years of age or over, who is not a *child* as defined in the statute regarding crippled or otherwise handicapped children. Sec. 2151.01 R. C.

The Ohio Revised Code has defined *contributing* in a prohibitory statute by stating that a *contributor* is a person who:

1. Abuses a child.
2. Aids, abets, induces, causes, encourages or contributes to the delinquency of a child.
3. Acts in a way tending to cause delinquency in said child.
4. Aids, abets, induces, causes, or encourages a child to leave the custody of the party to whom it has been legally committed. Sec. 2151.41 R. C.

Each day of any one of the above contributing offenses is a separate offense. Sec. 2151 R. C.

The statutory penalty for each offense is a fine of not less than five dollars nor more than one thousand dollars, or imprisonment for not less than 10 days nor more than one year, or both. Sec. 2151.99 R. C.

*Neglect* has also been defined in a prohibitory statute, in negative terms. The statute states that whoever, being legally charged with support, care, maintenance, or education of a legitimate or illegitimate child:

1. Neglects to do so.
2. Abandons such child.
3. Unlawfully beats, injures or otherwise ill treats it.
4. Allows it to beg.

Such person shall be charged with neglect. Sec. 2151.42 R. C.

Each day of such neglect shall constitute a separate offense and it carries a penalty of a fine of not more than five hundred dollars or imprisonment of not more than one year or both. Secs. 2151.42, 2151.99 R. C.

The neglect is deemed committed in the county where the child may be. Sec. 2151.42 R. C.

Any person may file an affidavit, with the clerk of Juvenile Court, setting forth in plain and ordinary language, the charges against the accused. The affidavit may be amended at any time before or during the trial. If it develops, in a child's case, that any person is guilty of violating a prohibition in the juvenile

statutes, the Judge may order a complaint filed. Secs. 2151.43, 2151.44 R. C.

On request, the prosecuting attorney shall prosecute all cases against adults. Sec. 2151.44 R. C.

The hearings of adult cases in Juvenile Court conform to the procedure of the Common Pleas Court, as do the provisions for bail and costs. Secs. 2151.46, 2151.47, 2151.59 R. C.

Most cases involving adults in Juvenile Court concern matters of neglect and non-support. The normal pattern of dealing with this adult type of case depends primarily on whether it is an *unofficial* or *official* filing.

In *unofficial* cases the matter goes before a Referee who attempts to soothe over parental difficulties and work out a plan in keeping with the income of the father and needs of the children. The main object of the Referee's action is to assure specific and regular financial contributions for the children's support. In the case of impossibility of support money, due to parental unemployment or incapacity, the Referee will refer the parties to the proper county or state agency which furnishes services appropriate to the family needs. Where the Referee makes an order concerning support, the parent must make payments through the court. In case the parent fails to comply with the Referee's order, an *official* filing is ordered and the case is set before the Juvenile Judge. The filing, along with a charge against the parent of non-support, also alleges that the children are *neglected*.

On a finding that the children are *neglected* the Court obtains exclusive jurisdiction of the children. In such cases the Court seeks to improve home conditions and to keep families together.

As a general practice, if there be extenuating circumstances, the Court will not incarcerate the parent, but will suspend the sentence on condition that he conform with the support orders of the Court. As a last resort the Court will commit the parent and make adequate provisions for the children.

*Jurisdiction*, in matters of child support and custody, is concurrent and co-extensive in Juvenile Court and the Common Pleas Court. The first court that invokes its power acquires the right to adjudicate the issue and settle the rights of the parties. Any court, with the consent of the Juvenile Judge, may certify the record of such case to the Juvenile Court for further pro-

ceedings. On certification the Juvenile Court acquires exclusive jurisdiction. Secs. 3109.04, 3109.05, 3109.06, 2151.23 R. C.

The matter of concurrent and co-extensive jurisdiction as to child support and custody is further refined, based on the manner in which action is initiated in each concurrent court.

If the non-support or custody matter is handled unofficially in Juvenile Court and a divorce is initiated in Common Pleas Court, Juvenile Court immediately withdraws from the case and turns over official jurisdiction to the Common Pleas Court.

If the matter is handled officially in Juvenile Court and a divorce is filed after Juvenile Court has obtained original jurisdiction, the Juvenile Court retains jurisdiction and the divorce petition filed in the Common Pleas Court should state the fact that jurisdiction as to the children is in Juvenile Court and that no order as to care, control and custody of the children is required of the Common Pleas judge.

The only case where certification to Juvenile Court does not require the Juvenile Judge's consent is where the Common Pleas Court, in a divorce action, and determining the custody of children of the marriage, finds neither parent suitable to have custody of the child or children. The Common Pleas Court certifies the jurisdiction of the children to Juvenile Court, which through its specialized service arranges for placement in a child care agency. Sec. 3109.06 R. C.

Commitments to child care agencies are for temporary care and the child is returned to his parents if possible when it is demonstrated that the objectionable conditions, which caused the Court to doubt the suitability of the parents, have been corrected or removed.

A parent desiring custody of a child that is under jurisdiction of Juvenile Court or committed to a relative or child care agency, can institute a hearing by filing a simple motion for custody. The motion should state the reasons for the bringing of the action and include sufficient copies for service on all necessary parties. A court worker is assigned to the case and investigates the matter to ascertain whether the conditions causing the removal have been remedied and what plan may be made for reunion. The attorney filing the motion should confer with the court worker and the agency worker, if any, to set forth the parent's plan. The ironing out of a plan prior to the actual hearing will convert the hearing into a mere formality.

### Paternity Cases

Although Juvenile Court has concurrent jurisdiction with the Common Pleas Court, practically all paternity cases arising in Cuyahoga County are filed and tried in Juvenile Court.

Judge Whitlatch recently pointed out, in a conference of the Cleveland Bar Association, that there are over 1,000 bastardy cases filed in Juvenile Court every year.<sup>14</sup> As a general rule, most such cases are filed during the pregnancy of the unwed mother or very shortly after the birth of the child. However, it is not uncommon that the mother does not file until 4 or 5 years later and for more than one illegitimate child. This delay is primarily due to three causes:

1. The mother may have been living with the father in an unmarried state at the time of the birth of the child and up to the present time.
2. The unmarried mother and father may have entered into a personal agreement as to the support of the child or children.
3. The mother for personal reasons and to avoid embarrassment prefers to support the child on her own.

A great many such cases are referred to the Court for action after the mother has attempted to obtain County Welfare aid. The welfare agency urges the mother to bring the action, to the end that the child will be supported by the father rather than by public assistance.

The Court, in dealing with paternity actions, makes every attempt to have the alleged father enter a voluntary appearance. If he agrees to this, an informal preliminary investigation is conducted by the Court's Paternity Referee, with the parties and their counsel. A compromise settlement, as to maternity expenses and support of the child, is the primary aim. If no settlement can be effectuated by the Referee, or where the plea is "not guilty," the Referee puts the case on for docketing before the Judge and jury.

If the plea is "guilty," the Referee has power to make the necessary adjudication, subject to the approval of the Court. This informal procedure is time saving and very conducive to settlement of the cases. Reactions of the parties are easily

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<sup>14</sup> Whitlatch, Address, Cleveland Bar Assoc. 2nd Informal Conference, Nov. 19, 1959, Reprinted, Cleve. Bar Assoc. J., Jan. 1960, p. 45-46.

tempered in the informal air of the Referee's court, and adjustments are easier to work out.

The attorney, in representing a client who intends to plea "guilty," should have a financial plan prepared for the court's consideration prior to the hearing.

On hearing, the Referee, who is an attorney, examines the complainant in order to ascertain whether she meets the requirements set forth in Sec. 3111.01 R. C. If the alleged father's attorney objects to the Referee conducting this examination, the matter is referred to a Judge, who conducts the examination. The accused and/or his counsel may ask any question of the complainant that he thinks necessary for his defense. When the case is referred to the Judge it is conducted under rules of civil procedure.

In cases where the accused denies paternity, the Court normally waits until the child is born before determining the case. This gives the parties time to reconsider the circumstances and often changes their minds as to the action itself. If, after this time, the accused does not retract his plea of "not guilty," the plea is entered and a demand for jury trial and blood tests may be filed. The motions for blood tests are granted as a matter of routine and must be accompanied by a test fee of \$50.50.

Blood test grouping which establishes non-paternity is not conclusive, but shall be admitted in evidence. The physician or physicians who conduct the tests shall be subject to cross examination by both parties after they have disclosed their findings in court. If either party refuses to submit to the tests this fact can be disclosed at the hearing, unless good cause is shown as to why it should not be admitted. Sec. 3111.16 R. C.

If the accused is found to be the reputed father of the child or children, the Court thereupon orders him to pay the complainant such sum as is necessary for her support, maintenance and necessary expenses caused by the pregnancy and childbirth. The Court then fixes a reasonable sum to be paid by the father for the support and maintenance of the child or children until he or they reach the age of 18 years. The Court can require the father to give security for such support, maintenance, and necessary expenses of the complainant and costs of the prosecution. This however, is rarely done, since most states have passed Uniform Dependents Acts. A father who fails to comply with the Court order can not escape his obligations by merely crossing state lines. Sec. 3111.17 R. C.



If the accused, before the Referee or Judge, pays or secures to be paid to the complainant a sum of money that she agrees to accept as full settlement of all claims she has against the accused and arising out of the bastardy petition, the Referee or Judge shall discharge the accused from custody upon his paying the costs of the hearing. This compromise must be acknowledged by both accused and complainant before the Referee or Judge, who shall enter the compromise on his docket or journal. This compromise settlement does not bar prosecution of the accused for non-support of legitimate or illegitimate children. Sec. 3111.07 R. C.

Attorneys probably appear in paternity cases most frequently on the side of the defendant. To properly represent the accused, the attorney has to familiarize himself with the statutes dealing with, and the procedures followed in, bastardy cases. These are valuable aids but do not guarantee success. Successful conclusion of a paternity case in favor of the accused depends on good presentation of facts, knowledge of the rules of evidence, and general trial ability.

### Conclusion

Roscoe Pound once said that juvenile court's individualized justice is the greatest achievement since the Magna Carta. The attorney, in practicing in such a court, will find that he has forsaken his usual adversary position and truly accepted his role as an officer of the court. The individualized justice theory, necessary in dealing with cases involving children, places the attorney and the Court on a common ground of cooperation. Because the attorney has the confidence of his client he can be of invaluable assistance to the Court in disposing of the matter in the best interests of the child and society.<sup>15</sup>

Judge Eastman, past administrative judge of Juvenile Court, once wrote that Juvenile Court is "an agency for the purpose of administering the laws concerning children as defined by statute. Its function, therefore, is purely judicial."<sup>16</sup> To dispel confusion and dissatisfaction about the purpose of Juvenile Court, and to check the tendency of juvenile courts to become administrative

<sup>15</sup> Whitlatch, *The Lawyer in the Juvenile Court*, Cleve. Bar Assoc. J., April 1950 (Reprint), p. 6.

<sup>16</sup> Eastman, *The Juvenile Court Judge's Job*, NPPA Journal, Oct. 1959, (Reprint by U. S. Dept. of Health, Educ., and Welfare, Children's Bureau, U. S. Govt. Printing Office, Washington, 1960), p. 421.

agencies dealing in child welfare, the attorney is encouraged to visit Juvenile Court and familiarize himself with its procedures. If the Court is to serve the purpose for which it was established it needs the support and understanding of the members of the legal profession.

Judge Noyes, President of the National Council of Juvenile Judges, recently said that the future of juvenile courts is not up to "the present members of the Juvenile Court Bench to determine," but is the responsibility of attorneys and those now in training for the legal profession. He said further that "your answer will be given by your deeds as members of a most honored profession, and your deeds will be determined by your training, your experience and spiritual maturity; in other words the kind of lawyer and human being you are; and so into your hands we place the wayward and neglected child, who, too, is the hope for a better world."<sup>17</sup>

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<sup>17</sup> Noyes, Editorial, *Juvenile Court Judge's Journal*, Dec. 1960, p. 28.