

MJJA – FALL 2020

Pre-Adjudication Discovery

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Pre-Adjudication Discovery

- Abuse/Neglect – Section 211.031.1.1, RSMo
- Status/BIW – Section 211.031.1.2, RSMo
- Delinquency – Section 211.031.1.3, RSMo

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Informal Discovery – Missouri Supreme Court Rule 123.08

(a) -- 10/14 Days

(b) -- That which is in your possession

(c) -- **Ongoing** obligation to disclose within 10 days of receipt

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery

Missouri Supreme Court Rule 123.08(d) =>

Missouri Supreme Court Rules 41-101

a/k/a --- The Civil Rules of Procedure

Pre-Adjudication Discovery
Abuse/Neglect – 211.031.1.1
Formal Discovery

Timeframe of formal discovery response deadlines
makes compliance with our 60/90 timeframes
very challenging if not impossible

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery

May include more than that which is in your possession!

Do you have the “practical ability” to obtain – See Hancock v. Shook, 100 S.W.3d 786, 796-797 (Mo banc 2003)

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery

Rule 56.01 – General Provisions Governing Discovery

(a) – Methods

(b) – Scope

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery – Rule 56.01

Rule 56.01 – General Provisions Governing Discovery

(c) – Protective Orders

Think about:

Forensic Interview DVDs & summaries – PKA

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery – Rule 56.01

Rule 56.01 – General Provisions Governing Discovery

(d) – Sequence and Timing of Discovery

(e) – Supplementation of Responses

(f) – Stipulations

(g) – Cooperation in Discovery

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 57 – Interrogatories and Depositions

57.01 – Interrogatories

(a) To a “Party.”

(c) – Responses

(3) Objections

(d) – Filing

Filing the Interrogatories/Answers/Objections versus

Filing the Certificate of Service

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 57 – Interrogatories and Depositions

57.09 – Subpoena for Taking Deposition

(a) – For attendance of a witness

(b) – (Duces Tecum):

- For production of Documents and Things

(c) – Subpoenas to Non-Parties

(d) – Service of Subpoenas

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 57 – Interrogatories and Depositions

57.07 (a) – Use of Depositions

Defending Depositions of Your Witnesses

It is important to *adequately* defend the deposition

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 57 – Interrogatories and Depositions

57.07 (a) – Use of Depositions

Deposing *or Interviewing* Expert Witnesses disclosed by the other parties

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 58 – Production of Documents and
Things and Entry upon Land for Inspection and
Other Purposes

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 58 – Production of Documents & Things

Rule 58.01 (a): Scope

(b): Issuance/Format/Timing/Service

*Filing Certificate of Service but not the Request for Production itself

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 58 – Production of Documents & Things

Rule 58.01 (c): Response

- (1) When due
- (2) Form
- (3) Objections and Privileges
- (4) Method
- (5) Signing
- (6) Service

*Filing a Certificate of Service vs. the Response to Request for Production itself

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 58 – Production of Documents & Things

58.02 -- Subpoena to Non-Party for Production of Documents/Things

(a): Scope

(b): Time

(c): Notice to Parties

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery –

Rule 58 – Production of Documents & Things

58.02 -- Subpoena to Non-Party for Production of Documents/Things (d): Response

1) None if no HIPAA Court Order?

2) Business Records Affidavits – Section 490.692, RSMo

Inadmissible unless disclosed 7 days prior to trial.

Be mindful of other potential objections to business records (i.e. SW notes in medical records – not for purpose of medical treatment?)

(e): Protection of Non-Party

Pre-Adjudication Discovery

Abuse/Neglect – 211.031.1.1

Formal Discovery

Rule 59.01 – Request for and Effect of Admissions

Rule 60 – Physical and Mental Examination of Persons

Rule 60.01 -- Examination and Report

Rule 61 – Enforcement of Discovery: Sanctions

See 58.01 (e) as to Request For Production

Pre-Adjudication Discovery

Status/BIW– 211.031.1.2

Informal Discovery – 127.11 (a)

Ten Days

127.11 (b): Limited to that which is within your possession

CAVEAT: Missouri Supreme Court Rule vs.
Constitutional Right to Due Process and exculpatory evidence → *Brady v. Maryland* issue

See 127.11 (a) (8) exculpatory evidence

127.11 (c): Continuing obligation to disclose within ten days of receipt

Pre-Adjudication Discovery

Status/BIW– 211.031.1.2

Formal discovery -- 127.11 (d) => Missouri Supreme Court Rules 41-101
The Civil Rules of Procedure

(Same as the Abuse / Neglect cases)

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Informal Discovery – 127.11 (a)

Ten Days

127.11 (b): Limited to that which is within your possession

CAVEAT: Missouri Supreme Court Rule vs.

Constitutional Right to Due Process and exculpatory evidence – *Brady v. Maryland*, 373 U.S. 83 (1963)

See 127.11 (a) (8) exculpatory evidence

127.11 (c): Continuing obligation to disclose within ten days of receipt

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery – 127.11 (d) => Rule 25

The *Criminal* Rules of Procedure

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Rule 25.03 –

Disclosure by State to Defendant without Court Order

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Rule 25.04 --

Disclosure by State to Defendant by Court Order requiring
Showing of Good Cause

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Rule 25.05 –

Disclosure by Defendant to State without Court Order

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Rule 25.06 –

Disclosure by Defendant to State by Court Order Requiring
Showing of Good Cause

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Rule 25.07 – Manner of Making Disclosure

Sending copies by disc/flash drive/email/paper copies

Issue: Photographs of a sensitive nature!

i.e. Child Pornography

See 25.07 (b) and have a laptop available that is not connected to the Internet

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Rule 25.08 – Continuing Duty to Disclose

Don't forget:

****Brady v. Maryland, 373 U.S. 83, at 87 (1963) –***

Exculpatory Evidence or Mitigating Evidence

“The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”

Pre-Adjudication Discovery
Delinquency – 211.031.1.3
Formal Discovery

Rule 25.11 – Protective Orders

Forensic Interviews – DVDs and Summaries

Sections 491.075 and 492.304, RSMo

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Depositions

Rule 25.12: by Defendant – how taken

(c) Juvenile does not have right to be present

Rule 25.13: Offered by Defendant – when admissible

Rule 25.14: By State to Preserve Testimony

Rule 25.16: Offered by State – when admissible

Remember the Defendant's Constitutional
Right to Cross Examine!

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

25.15: Discovery by State – when and how taken

Pre-Adjudication Discovery

Delinquency – 211.031.1.3

Formal Discovery

Sanctions – Missouri Supreme Court Rule 25.18

(a) Failure to comply may lead to the Court ordering

1) the party to make disclosure of material and information not previously disclosed,

2) a continuance,

3) exclusion of such evidence, *or*

4) an order it determines just under the circumstances.

(b) Willful violation may subject counsel or defendant to appropriate sanctions

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Questions?

Thanks everyone – feel free to contact me:

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