

Interveniarmus! A Muggle Lawyer's Guide to Intervening in Juvenile Court

by Jackie Madara-Campbell

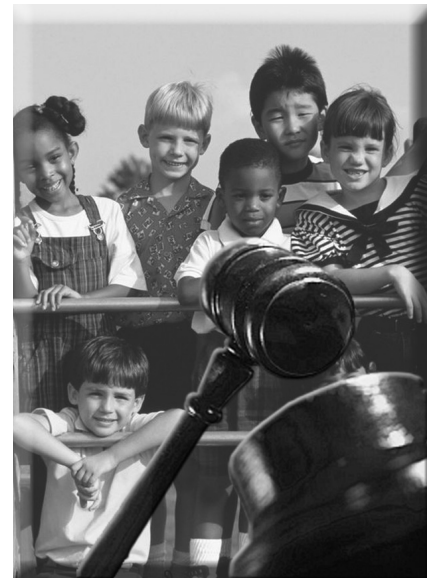
Pardon the Harry Potter inspired title. Its purpose is two-fold. First, it's a trick using funny words to entice you to read this article. After all, with a title like that, it's bound to be witty and sophisticated - or at least mildly amusing. Juvenile court... kids' book reference - you get it. Clever, clever. Second, the title is a tongue-in-cheek reference to the mystification of the juvenile code and Juvenile Court practice.

If you are one of the 8 billion or so who have read the books or seen the movies, you know the world of Harry Potter is a magical, mystical place with its own rules and reality that exists alongside the real world. Harry's world is divided into witches and wizards (those who have magical abilities) and muggles (non-magical people).

The world of juvenile court can seem a lot like that. It's a mystical world with its own rules and reality. And if you're a lawyer who doesn't practice regularly in juvenile court, you're

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much like the muggles in the Harry Potter stories who don't have access to the charms and magic that seem necessary to successfully navigate through such strange environs.

Whether you are a wizard or a muggle, this article will arm you with a Gryffindor's Sword of sorts - in the form of case law & statutes, as well as a marauder's map - in the form of sample pleadings, to help you advocate for your client attempting intervention in juvenile court.

Platform 9^{3/4} -- Otherwise Known as Nebraska Revised Statutes §25-328, et seq: Boarding the Intervention Train

Successful intervention in a Juvenile Court proceeding starts with gaining a basic understanding of the statutes governing intervention in civil matters. Neb. Rev. Stat. §25-328, et seq., serve as a "guidepost" to intervening in juvenile court.¹ The statutes are a "guidepost," not a "road map," because some provisions of the statutory scheme cannot be reasonably applied to juvenile court proceedings. Like the platform of the train going to Hogwarts in *Harry Potter*, §25-328 is only helpful if you take a good run at it and hit it just right.

Neb. Rev. Stat. §25-328 states:

Any person who has or claims an interest in the matter in litigation, in the success of either of the parties to an action, or against both, in any action pending or to be brought in any of the courts of the State of Nebraska, may become a party to an action between any other persons or corporations, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the

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defendants in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, either before or after issue has been joined in the action, and before the trial commences.

Per §25-328, the person seeking to intervene in juvenile court must claim an "interest in the matter in litigation..." or their Complaint to Intervene will be overruled.² But what does that mean when we are talking about a case involving a child in juvenile court? It means more than an indirect, remote, or conjectural interest.³ More specifically, it means a direct legal interest of such character that the intervener will gain or lose by the direct operation and legal effect of the judgment which may be rendered in the action.⁴

However, contrary to the language of §25-328, the juvenile court intervener will not necessarily "join with the plaintiff or defendants," nor will the intervener demand anything adverse to both plaintiff and defendant. First, there are not "Plaintiff" and "Defendants" in juvenile court. Rather, cases are captioned "In the Interest of (child's name)."⁵ Moreover, the intervener can't truly join with the state or the child due to the nature of the proceedings and the narrow statutory provisions regarding who can file a Petition in juvenile court.⁶

Additionally, because a juvenile case does not conclude after trial (adjudication), it is not necessary for the intervention to occur prior to trial, as §25-328 directs in other civil cases. The nature of juvenile court provides for ongoing post-adjudication disposition, which makes post-trial intervention relevant in juvenile court although it would not be relevant in other civil proceedings as a result of the dispositive nature of a decision at trial.⁷ As a result, the court can grant leave to intervene at any stage in the proceedings. Be wary however, if you represent a grandparent. Because their rights regarding their grandchild flow through their child's parental rights, their ability to intervene as a matter of right - as well as their status as a party if they have already intervened - will most likely terminate upon the severance of their child's parental rights to their grandchild.⁸

The Sorting Hat: Unraveling who has a Legal Interest Sufficient to Warrant Intervention in a Juvenile Court Proceeding

At first blush, deciding who can and can't intervene in juvenile court may seem as random as Hogwarts' sorting hat, which chooses the house in which Hogwarts' students will live. However, like with the sorting hat, there is a method to the madness. The method, when it comes to intervention as a matter of right, for deciding who has a legal interest sufficient to warrant intervention in juvenile court originates in a constitutional liberty interest or statutory right on the part of the intervener.⁹

There are two types of intervention in juvenile court, intervention as a matter of right and equitable intervention. Parents and grandparents can intervene in a juvenile court proceeding as a matter of right.¹⁰

A wrinkle occurs when dealing with the father of a child born out of wedlock for whom paternity has not been judicially established. However, since §25-328 only requires that the person seeking to intervene "has or claims to have" an interest in the matter in litigation, the allegation in the Complaint to Intervene should be taken as true and leave to intervene granted regardless of a lack of judicial establishment of paternity.¹¹ The claim that the putative father is indeed the father can only be used for the limited purpose of determining whether the putative father can intervene.¹² The juvenile court is authorized by statute to make paternity determinations, and can do so at any time via genetic testing.¹³

There are all kinds of well-meaning folks other than parents and grandparents who may wish to intervene in a juvenile court matter involving a child they love. Well, as my grandpa would say, you can wish in one hand and spit in the other and see which gets full first. (My grandpa used a word other than spit. It started with an "s" too.)

Under current case law, such well-meaning folks probably will not be allowed to intervene. I say *probably* because it depends upon the facts of your case and the judge's discretion. Additionally, current case law leaves a lot of unanswered questions, and hence other possibilities under the theory of equitable jurisdiction.

Apart from intervention of a parent or grandparent as a matter of right, Aunt Agnes, grown-up sister Suzie, or foster father Frank *may* be granted leave to intervene under the principles of equitable intervention.¹⁴ It has been suggested that those with a sufficient legal interest and tie to the child who are not permitted to intervene in juvenile court as a matter of right may be allowed to intervene under the court's equitable discretion.¹⁵

The key intervening under equitable principles is filing a pleading that alerts the judge to the theory of equitable intervention, and sets forth allegations that demonstrate a concrete legal interest in the outcome of the case, such that the prospective intervener would gain or lose by the direct operation of the judgment that may be rendered in the case.¹⁶ In other words, tell the judge why you have a magic wand in the duel.

If your client is relying on the court's powers, make sure to show the court facts that paint a picture of your client as more than "just" an aunt, uncle, brother, sister, or foster parent.

For example, if your client is a foster parent, perhaps the child has been placed with him or her for years as a pre-adoptive placement; or perhaps the parent(s) relinquished directly to your client; or perhaps your client has already adopted one of the

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child's siblings; or perhaps your client took care of the child before he or she entered foster care; or perhaps they are biological relatives. If your client is an aunt or uncle, or sibling, tell the court about his or her pre-juvenile court relationship with the child. The closer they were, the better your equitable argument.

It is important to note that equitable intervention is only likely to be successful if parental rights are no longer intact, based on a concern that third parties may interfere with constitutionally protected parental rights.

A hazard for which to watch is the non-biological parent or non-biological grandparent seeking to intervene as a matter of right. This may happen in a variety of instances, including a step-parent situation, or a same sex parent family where the child was conceived via artificial reproductive technology. Be aware that, unless there has been an adoption, a non-biological parent or non-biological grandparent may not possess a legal interest sufficient to warrant intervention as a matter of right under current case law.¹⁷ Looking through the eyes of the child at interest, that may not feel fair. If the child has a close, parent/child or grandparent/grandchild relationship with the would-be intervener, he or she carries the same emotional significance to the child as would a biological relative.

A denial of leave to intervene in the aforementioned situation seems to conflict with the well settled rule that the juvenile code is to be construed liberally to accomplish its purpose of serving the best interests of the juveniles who fall within it.¹⁸ This may be where equitable intervention will have its day. So far, case law is largely silent on equitable intervention, but like most aspects of Nebraska law, it is a work in progress.

The Polyjuice Potion of Intervention - Step by Step

Polyjuice potion is a very complicated potion in Harry Potter's wizarding world which enables the person who drinks it to assume the form of someone else. A well-drafted complaint for intervention can serve as a polyjuice potion of sorts by allowing your client to assume the form of a party to the juvenile court action.

The first step is to draft and file your complaint for intervention.¹⁹ Examples of complaints for intervention are provided at the end of this article.²⁰ These examples may not fit every circumstance, so be mindful of the facts of your case while molding the samples to fit your needs. Be sure to specify facts sufficient to state a cause of action and to request relief that can be granted by the juvenile court. If not, your Complaint may perish quickly via the killing curse of an opposing party's motion to dismiss.²¹ Additionally - and this is an imperative of which to make sure the court is aware - the court must assume that all factual allegations contained in the complaint for intervention are true for purposes of ruling on the complaint.²²

As with any complaint, the other parties to the case have 30 days to file an Answer.²³ Since service has already been perfected via the juvenile court matter, you do not have to perfect service of your Complaint. Mailing it to the attorneys and prose parties of record is sufficient.

The Elder Wand: Appealing an Unfavorable Ruling on Your Complaint for Intervention

Now that you have the Sword of Gryffindor and the marauder's map, you need the Elder Wand - the ability to appeal an unfavorable ruling on your complaint to intervene.

The Elder Wand is one of the three deathly hallows in *Harry Potter and the Deathly Hallows*, the seventh and final book of the Harry Potter series. The elder wand bears many similarities to the appellate process. The elder wand is the most powerful wand ever to exist. It is the most dispassionate and ruthless of wands in that it will only take strength into consideration. It is completely unsentimental.²⁴ Likewise, the appellate process only considers what is allowed by law, and is without regard for sentiment.

An order overruling a complaint to intervene is a final, appealable order.²⁵ Be aware, however, that the standard of review differs depending upon whether the intervention was based on a matter of right or on equity. In an appeal of an order denying an intervention predicated on a matter of right pursuant to statute, the denial of the intervention raises a question of law requiring the appellate court to reach its independent conclusion.²⁶ Contrastingly, appellate review of an order denying a request for equitable intervention will be reviewed for an abuse of discretion by the lower court.²⁷


Leaving the Firm Foundation of Fact: The Voyage Into the Realm of Intervention Begins Here

In summary, chances of successfully intervening in a juvenile court action are greatest if a biological or adoptive parent or grandparent is entitled to intervene as a matter of right. If your client does not fall into those categories, there is still a chance if you can make a successful argument based on principles of equity, presuming there is no significant danger of interference with parental rights. The case law and statutes cited in this article are your marauder's map.

In keeping with my Harry Potter theme, I end with a quote from Harry's wise old professor, Albus Dumbledore: "From this point forth, we shall be leaving the firm foundation of fact and journeying together through the murky marshes of memory into thickets of wildest guesswork." In other words - there




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are situations in juvenile court intervention that are none too clear. Hopefully this article will give you a fertile batch of soil upon which to cultivate your thickets of (educated) guesswork. Interviarmus! 

Endnotes

- ¹ 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.1 (2007 Edition).
- ² Neb. Rev. Stat. §25-328.
- ³ *In re Interest of Davenport*, 263 Neb. 614, 641 N.W.2d 379 (2002).
- ⁴ *In re Interest of Davenport*, 263 Neb. 614, 641 N.W. 2d 379 (2002); *In re Interest of Kayle C. and Kylee C.*, 253 Neb. 685, 574 N.W.2d 473 (1998).
- ⁵ Neb. Rev. Stat. §43-274(1); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.1 (2007 Edition)
- ⁶ See Neb. Rev. Stat. §§43-272.01(2)(h) and 43-291; see also *In re Interest of Jamie P.*, 12 Neb. App. 261, 670 N.W.2d 814 (2003); see also 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.1 (2007 Edition).
- ⁷ 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.1 (2007 Edition).
- ⁸ *In re Interest of Ditter*, 212 Neb. 279, 322 N.W.2d 642 (1982).
- ⁹ See *Santosky v. Kramer* 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002); *In re Interest of Kayle C. and Kylee C.*, 253 Neb. 685, 574 N.W.2d 473 (1998); *In re Interest of Dylan W.*, 8 Neb. App. 1039, 606 N.W.2d 847 (2000); Neb. Rev. Stat. §43-284; Neb. Rev. Stat. §43-1802.
- ¹⁰ See *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002).
- ¹¹ 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.4 (1997 Edition).
- ¹² *In re Interest of Change of Name of Davenport*, 263 Neb. 614, 641 N.W.2d 379 (2002); *In re Interest of Kayle C. and Kylee C.*, 253 Neb. 685, 574 N.W.2d 473 (1998); *Basin Electric Power Co-op v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.4 (1997 Edition).
- ¹³ Neb. Rev. Stat. §43-247(11).
- ¹⁴ *Colman v. Colman Foundation, Inc.* 199 Neb. 263, 258 N.W.2d 128 (1977); *Department of Banking of Nebraska v. Stenger, et al.*, 132 Neb. 576, 272 N.W. 403 (1937); *State of Nebraska ex rel. City of Grand Island v. Tillman*, 174 Neb. 23, 115 N.W.2d 796 (1962); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.1 (2007 Edition).
- ¹⁵ See *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.6 (2007 Edition).
- ¹⁶ See *State of Nebraska ex rel. City of Grand Island v. Tillman*, 174 Neb. 23, 115 N.W.2d 796 (1962).
- ¹⁷ See *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002).
- ¹⁸ *In re Interest of Vincent P.*, 15 Neb. App. 437, 730 N.W.2d 403 (2007).
- ¹⁹ Neb. Rev. Stat. §25-330; *In re Interest of Kiana T.*, 262 Neb. 60, 628 N.W.2d 242 (2001).
- ²⁰ The Sample Complaints provided herein are intended to be used as guides only. They must be tailored to the circumstances of your particular case. The author gives special thanks to Chris Costantakos. Ms. Costantakos was kind enough to allow the author to borrow from her work in the creation of these samples.
- ²¹ *In re Interest of Change of Name of Davenport*, 263 Neb. 614, 641 N.W. 2d 379 (2002); *In re Interest of Kayle C. and Kylee C.*, 253 Neb. 685, 574 N.W.2d 473 (1998); *Basin Electric Power Co-op v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.2 (1997 Edition).
- ²² Neb. Rev. Stat. §25-330.
- ²³ *Iodence v. Peters*, 64 Neb. 425, 89 N.W. 1041 (1902); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.2 (2007 Edition).
- ²⁴ 24 December 2007, PotterCast Interviews with J.K. Rowling.
- ²⁵ *Basin Electric Power Co-op v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985).
- ²⁶ *In re Interest of Change of Name of Davenport*, 263 Neb. 614, 641 N.W. 2d 379 (2002); *Rosado v. Bridgeport Roman Catholic Diocesan Corporation, et. al.* 60 Conn. App. 134, 758 A.2d 916 (2000); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.2 (1997 Edition).
- ²⁷ *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002); 4 Chris Costantakos, *Juvenile Court Law and Practice* §11.2 (1997 Edition).



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IN THE SEPARATE JUVENILE COURT FOR WHATEVER COUNTY, NEBRASKA

IN THE INTEREST OF) DOC. 222 No. 22
GRETТА GRANDCHILD) COMPLAINT FOR
A Child Under the Age of Eighteen Years) GRANDPARENT INTERVENTION

COME NOW, GARRY GRANDPARENT and GERTRUDE GRANDPARENT, husband and wife, and paternal grand-
parents of GRETТА GRANDCHILD, minor child at interest herein, by and through their attorney, Lucy Lawyer, pursuant to
Neb. Rev. Stat §25-328, and move the Court for an Order allowing them to intervene in the instant case.

In support of their Complaint to Intervene, Complainants state and allege as follows:

1. The State of Nebraska has filed a Petition alleging that GRETТА GRANDCHILD comes within the meaning of Neb. Rev.
Stat. §43-247(3a) by reason of the faults or habits of her mother.

2. The above-described matter is pending before this Court.

3. GRETТА GRANDCHILD has been in the temporary care, custody and control of the Nebraska

Department of Health and Human Services since the instant case's inception, and, as of the date of filing this Complaint, is
placed via NDHHS, with GARRY AND GERTRUDE GRANDPARENT as relative foster parents.

4. Complainants GARY AND GERTRUDE GRANDPARENT are the parents of DANNY DADDY , who is the natural
father of GRETТА GRANDCHILD. As a result, complainants are the paternal grandparents of the child at interest herein.

5. Prior to the child's involvement in juvenile court, GARY AND GERTRUDE GRANDPARENT established a significant,
beneficial relationship with GRETТА GRANDCHILD through frequent weekend overnight visitation with their grandchild in
their home. They have also voluntarily cared for the child for extended periods of time outside of foster care when her parents were
unable to care for her in the past.

6. Complainants, as biological grandparents of the child at interest herein should be made a party herein as a matter of right.
In Re Interest of Kayle C. & Kylee C., 253 Neb. 685, 574 N.W.2d 473 (1998).

7. Further, Complainant's interest in their relationship with their grandchild is of a direct and immediate character such that
they will gain or lose by the direct legal operation of and effect of the judgments entered by this Court in the instant matter.

8. Complainants seek to intervene as a party in this matter for the following purposes:

- a. To receive notice and an opportunity to be heard and to participate as a party in all hearings in this case affecting the minor child.
- b. To maintain their familial relationship with their grandchild through placement, and - should termination of parental rights occur -- adoption.
- c. To raise before the Court and seek relief regarding any other matter affecting or concerning the welfare, best interests, place-
ment, or permanency of their grandchild.

9. The best interests of GRETТА GRANDCHILD would be served by making complainants parties to this matter.

WHEREFORE Complainants hereby respectfully pray that this Court enter an Order setting an Answer Date, and upon hear-
ing, an Order granting relief as set forth herein above, and for such other relief as the Court deems just and proper in the premises.

DATED this __ day of _____, 200__.

GARY AND GERTRUDE GRANDPARENT, Complainants,

BY: _____

VERIFICATION

STATE OF NEBRASKA)

COUNTY OF _____)

CERTIFICATE OF SERVICE

INTERVENIARMUS!

IN THE SEPARATE JUVENILE COURT OF WHATEVER COUNTY, NEBRASKA

IN THE INTEREST OF)	Doc. 333 No. 333
NANCY NIECE)	COMPLAINT FOR
A Child Under 18 Years of Age.)	EQUITABLE INTERVENTION

COMES NOW ANNIE AUNT, maternal aunt of NANCY NIECE, minor child, and Complainant herein, and for her cause of action pursuant to Neb. Rev. Stat. §25-328 et. seq., hereby state and allege as follows:

1. Complainant is the sister of Molly Mom, mother of the minor child. Molly Mom is presently incarcerated in the State of California, and is not eligible for parole until 2015. She is not in a position to have placement or custody of the child at this time.

2. The biological father of NANCY NIECE relinquished his parental rights via written instrument to the Nebraska Department of Health and Human Services on August 8, 2008.

3. The minor child at interest was removed from the parental home 8 months ago, i.e., and placed in the temporary custody of the Nebraska Department of Health and Human Services for foster care placement, in connection with the above-captioned juvenile proceeding.

4. Complainant loves her niece, and have demonstrated a continuing concern and interest in her care and well-being, and has established a significant, beneficial relationship with the minor child, including extended periods of visitation with the minor child, both prior to and after her removal from the parental home, and currently exercises visitation with the minor child in connection with the above-captioned proceeding. ANNIE AUNT has voluntarily participated in Family group conferencing regarding the minor child and has also attended all hearings in this case.

5. Complainant has undergone a home approval study arranged by the child's legal custodian in this matter, the Nebraska Department of Health and Human Services. Said home study, completed in or about (date), approved the Complainant as a suitable placement for the minor child.

6. It is the policy of the Nebraska Department of Health and Human Services that placement with a relative should be given priority when determining the placement of minor children in the custody of the Department. See 390 NAC 7-004.01A reflected on Exhibit "A" attached hereto and incorporated herein by this reference. As the aunt of the minor child, complainant would qualify for priority consideration as a relative placement for their niece.

7. Prior to the father's relinquishment, the permanency objective for minor child was one of reunification with her father. However, after the father's relinquishment, the likelihood of the minor child's reunification with a parent is diminished in light of the fact that his biological mother remains incarcerated in the State of California, and is not expected to be released for several years.

8. In view of the foregoing circumstances, the Complainant's interest in her relationship with her niece is of a direct and immediate character such that she will gain or lose by the direct legal operation of and effect of the judgments entered by this Court in the above-captioned matter, especially if the court determines that it is not in the best interest of the minor child to reunify her with her mother, or if the parental rights of her mother are terminated or relinquished. Furthermore, if the minor child is to be placed for adoptive purposes with her current foster parents or other non-family members, such action would result in manifest injustice by depriving Complainants of their relationship with their niece, and would also operate to deprive NANCY NIECE of the ability to be cared for and to know and have a relationship with the other members of her extended biological family, including the Complainant herein, as well as other cousins and relatives.

9. The biological mother and the Nebraska Department of Health and Human Services each have no objection to this Complaint for Intervention.

10. Under principles of equitable intervention, this court has authority to grant Complainant leave to intervene as a matter of equitable discretion under all of the foregoing alleged circumstances. See *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002); *Colman v. Colman Foundation, Inc.*, 199 Neb. 263, 258 N.W.2d 128 (1977); *State ex rel City of Grand Island v. Tillman*, 174 Neb. 23, 115 N.W.2d 796 (1962).

11. Complainant seeks to intervene as a party in this matter for the following purposes:

- a. To receive notice and an opportunity to be heard and to participate as a party in all hearings in this case affecting the above-named minor child.
- b. To maintain a positive relationship with her niece through visitation as approved by this court.

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- c. To seek placement of the minor child during the pendency of these proceedings;
- d. To seek custody, including adoption of the minor child in the event that reunification or return of the child with her mother is determined by this court not to be in the best interests of the minor child; or in the event that this court were to terminate of the rights of the minor child's mother.
- e. To raise before the court and seek relief regarding any other matter affecting or concerning the welfare, best interests, placement or permanency of the above-named minor child.

WHEREFORE, Complainant prays for an order setting an answer date to this Complaint as determined by this Court pursuant to Neb. Rev. Stat. §25-330; further, Complainants pray for the entry of an order by this court granting the Complainants leave to intervene in this matter, and for further relief as this court may deem just and equitable in the premises.

Dated this ____ day of _____, 200__.

ANNIE AUNT, Complainant

By: _____

VERIFICATION

STATE OF _____)

COUNTY OF _____)

CERTIFICATE OF SERVICE

Do you or your client need California Counsel?

John R. Wertz is a Nebraska raised and educated lawyer (U.N.L. Business Admin. - 1969, Law School –1972), Member of the California and Nebraska Bar Associations, practicing in California for over 30 years.

Wertz McDade Wallace Moot & Brower is a 20-lawyer, general civil practice law firm, practicing throughout California. The firm is available to assist you or your client as local, associated, or co-counsel on a broad range of client matters or assist in the referral of your matter if outside the firm’s expertise (criminal or domestic law matters).

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