

**MASSACHUSETTS SCHOOL OF LAW
JUVENILE LAW EXAM, SPRING 2004
PROFESSOR DICKINSON**

You have three hours to complete this exam. Please write your social security number on every examination book you use. All exams should be written in ink, using only one side of a page. This exam is open-book; therefore you are expected to use specific authority in your answers.

1.) Your name is Maria Taylor. You are clerk to the newest judge in the Lowell Juvenile Court, the Honorable Eugenia Balos. Judge Balos has just heard her first juvenile case - the case of Marco Tebaldi, a CHINS matter. The judge has asked you for your opinion as to how she should rule and why. Please support your position with specific authority, both statutory and case law. Assume she heard the following facts:

Marco Tebaldi is thirteen years old and a student at Bartlett Junior High School. He moved to Lowell last year from Puerto Rico with his mother, Tina Torres, age twenty-nine, and grandmother, Helen Torres, age fifty-nine, after his grandfather passed away. Marco had lived in Puerto Rico with his mother and maternal grandparents for the last four years. He had moved there with his mother after his father, Charles Parker, age thirty-eight, left them. Marco's parents never married, but Marco, Tina and Charles lived together in Lowell as a family, until Charles left. Shortly after that, Marco and Tina went to Puerto Rico with Marco's grandparents.

In Puerto Rico, Marco and his mother resided with his maternal grandparents, Kamil and Helen Torres, who were very strict, very traditional, and very religious. During the time he lived there, his maternal grandparents were the disciplinarians, rather than his mother, who was recovering from substance abuse. During the time she had lived with Charles, Tina drank quite heavily and became addicted to a prescription drug given her for depression. When Charles left her, Tina's parents took over. They made arrangements for Tina and Marco to come and live with them, and they also took care of Tina's therapy.

Charles made a few sporadic attempts at contact with Marco and Tina, but, for the most part, did not communicate until they came back from Puerto Rico. Charles currently lives and works in Andover, Massachusetts. He has his own CPA practice and owns an eleven room home where he lives with his current fiancé Samantha Madison, a teacher at Phillips Academy, and her fourteen year old daughter Deanne. Since coming back from Puerto Rico, Marco has visited at his father's home, and frequently stays overnight.

The school principal and supervisor of attendance, Tina Botros, filed the CHINS petition alleging that Marco had persistently violated school rules by engaging in aggressive behavior towards other students in his class. Marco's English teacher, Peter Marshall, had thrown him out of class because Marco allegedly assaulted and battered another student with his English book. This incident occurred during a class exercise; Marshall had instructed the students to write a short essay about their cultural heritage as they were discussing the many different kinds of Americans. Marco had thrown his book which struck Alan Riordan in the eye, allegedly after Riordan had looked over at Marco, and whispered that Marco should be excused from the exercise because he was not American. Marco received an after-school detention as punishment.

After he stayed for detention, Marco allegedly attacked a boy after school, by riding his bicycle into him. Demian Aronis, the boy he ran over, reported to school the next day with his mother. Demian had cuts and abrasions all over his right leg, and was unable to play soccer that day – he was the best player on the school team. Marco admitted that he had run Demian down, but said that he was jealous because no one made fun of Demian, even though he was a “grease-ball who speaks broken English”. Marco was consequently given in-school suspension for a week as punishment.

The week he did the suspension, Marco did not fully complete the assignment that the suspension teacher, Donna Wilson, had assigned. Marco and two other students who were on suspension for fighting each other, were required to spend each day of their in-school suspension in the computer lab. The students were required to do research on school violence for the first four days of their suspension, and then write an essay on the last day of their suspension. Marco, however, did not write an essay at all. He scribbled at his desk, he looked out the window, and he finally turned in a list, rather than an essay, describing what teachers and administration, not students, should do.

Ms. Wilson reported this incident to the principal, Ms. Botros, and Botros called Marco's home to schedule a conference. Marco's mother, Tina Torres, answered and Botros asked to see both her and her son the next day to discuss ways for Marco to avoid using violence. Ms. Torres asked if the meeting could be held on her lunch break from a local retail store. The next day, Marco did not show up for the meeting, because he was not in school that day. Ms. Torres was there, and reported that Marco was not feeling good and stayed home.

During the course of the conversation with Ms. Botros, Ms. Torres revealed that she was concerned that Marco was about to be involved with a gang. She frequently worked on Saturdays, and the previous Saturday she had seen Marco in the park talking to some youths who she knew to be gang members. She questioned him about this later, but he insisted he was only talking to them. They ended up getting into a quarrel, whereupon Marco blurted out that he needed to protect himself from harassment at school. When his mother questioned him about what he meant by this, he screamed “you dumb pick, that's why dad left you, because you just don't know anything!”

At that point, his grandmother, Helen Torres, who lives with them, intervened, because Ms. Torres had started to cry and scream at Marco's out-burst. The grandmother Helen then reprimanded Marco, and sent him to his room.

Ms. Botros and Ms. Torres also discussed the last incident that occurred during the suspension. Botros told Torres that Marco was supposed to write an essay. The subject was to be "Safe schools – how students and faculty can work together to ensure safety and peace". Marco wrote not an essay but a bulleted list entitled: "Tips: How to make schools safer"; this list included mostly things teachers and administration should do. When Ms. Wilson, the suspension teacher, saw the list, she asked Marco why he did not include what students should do, whereupon, Marco took the list, which he had drafted on the computer and had printed out, and hand wrote at the bottom: "students should take up arms if harassed for any reason." Botros concluded the meeting by telling Ms. Torres the school was going to file a CHINS petition.

Ms. Botros met with Marco the next day and showed Marco his paper, explaining that, besides his trying to hurt someone again, the purpose of the in-school suspension seemed to have failed. Rather than his discussing ways that students and faculty could work together, he came up with a list of requirements for faculty and administration, excluding any actions on the part of students, except for his after-thought scribbled script calling for students to respond with weapons, which really scared and concerned the principal. Marco said that he thought he had complied with the purpose of the exercise, which was to research and then report about how to make schools safe. The principal then sent him to the counselor, David Russell, who reported later, that, due to confidentiality, he could not relate to anyone what Marco had said, but he could say that he was concerned that Marco was resorting to violence as a way of dealing with a multitude of personal issues.

2.) Your name is Nick Kallio. You have been appointed to represent Tina Torres, mother of Marco, now fourteen, in a Care & Protection matter filed in the Lowell Juvenile Court. (Please assume all of the facts in question 1; also assume that Marco was adjudicated a Child in need of services and permitted to remain at home. In the meantime he attended therapy, met regularly with his school guidance counselor, and there were no further violent incidents at school).

The allegation is that Tina has neglected Marco as a result of certain religious practices she has been engaging in since her mother, Helen Torres, who had lived with her and Marco, died nine months ago. Tina, who in the past had problems with depression and substance abuse, found that meditation seemed to calm her thoughts, and began taking Buddhist meditation classes at a new center in Andover. Sometimes she would drop off Marco at his father's, and sometimes Marco would stay home alone. Tina tried to get Marco to go with her, but he was not interested.

Tina recently went on a weekend retreat in the mountains, and Marco went on a hunting trip with his father. When Marco and Charles came back, Tina was not home, but Marco convinced his father she would be home any minute, and Charles dropped off Marco at home. It was Sunday night, and Marco was alone from Sunday evening until Monday after school. (Tina says that Charles knew she was not coming home until Monday).

Marco was late to school on Monday and reported to his teacher he had not slept well because he was alone and afraid. School officials filed a 51A, which was supported. The Department of Social Services then filed the current case, which is scheduled for a seventy-two hour hearing. Marco is currently still at home with his mother, but she believes the Department is not only seeking to take custody away from her, but also is trying to get Charles custody. She says the Department is prejudiced against her because of her beliefs and practices. She adds that a social worker conducted a home visit at Charles' place and she believes that Marco may be placed with him. Charles told her he is going to go to a single-father parenting class and attend family therapy sessions as suggested by the Department.

Tina also tells you that when they lived together, Charles frequently injured her. Her parents, who are both deceased, learned about this, and that was the main reason they took her and Marco to Puerto Rico, to get away from Charles. While Tina acknowledges that she drank and took drugs, Charles also frequently drank and would then hurt her emotionally and physically. While she sustained many an injury, because she did not have friends and did not work, no one really saw her to report this, and she never sought medical attention. Once he hit her on the head so hard, she was unconscious. When she woke up, and asked whether she should see a doctor, Charles said she was fine, and she states she was actually afraid to seek medical attention. Another time he dragged her down the stairs of their home, screaming that she was stupid. Most of these incidents occurred in the presence of Marco.

Although Charles had a history of hurting her, he never abused Marco, Tina says. But she is concerned that, because Marco saw a lot of this when he was younger, he is now very aggressive as a result. She is also concerned that the services offered by the Department to Charles will not be directed at domestic violence or anger management. She is concerned that his volatile personality will rub off on her son, if that has not already happened. She also states that, just like when he used to abuse her, her biggest fear is that he will just get away with everything because he comes across as a mature businessman and she looks like a crazy little girl.

You ask to see Tina's psychiatric reports. She began therapy in Lowell shortly after Charles left her and her parents came in to help her, and continued therapy in Puerto Rico. You discover this entry from her therapist in Lowell: "Patient presented with a 'large hematoma and bruise around the left face. Black eye--bruising around left mandible. Bruise on both arms--two on left. States she was beaten by boyfriend.'" You know that Tina and Charles had been living together right about at that time, but it is not clear that he was the boyfriend referenced in the physician's record.

Other than this, the record reveals no evidence of domestic abuse on the part of Charles. His fiancé Samantha Madison told a court investigator that Charles was not physically abusive to her or her daughter Deanne.

Marco had been tested when he was adjudicated a CHINS, and that report states that "the child's personality testing found indications of a child that 'was angry and depressed.' 'Anger, worry and depression' were common emotions as well as physical violence, physical injury and abandonment."

As Tina's lawyer, you need to prepare for the seventy-two hour hearing. Describe your strategy for this hearing, and also advise Tina as to her legal rights. Predict for her also what you think the court will do and why, and what may or may not happen in the future of this case.

3.) Your name is Alicia Einstein and you represent Marco Tebaldi in a delinquency matter. (Assume all facts in previous two questions). He is now fifteen and has been living with his father Charles Parker, his fiancé Samantha, and her daughter Deanne. The Care & Protection case had been dismissed after Marco's mother Tina was ordained as a Buddhist nun. Tina currently lives at the temple in upstate New York and sees Marco on some weekends, holidays, and summer vacation. At the time this delinquency matter was filed, Tina was on retreat in England.

This case was prompted by an incident that occurred a few days ago at the home of Charles Parker and Samantha Madison. Samantha was hosting a cocktail party in their garden for a charity affair. She was in the kitchen getting some more wine when she heard Marco's voice screaming "You whore", and then, as she ran down the hallway, she saw her daughter Deanne falling down the stairs, screaming and crying. In the meantime one of the ladies at the party called the police before Charles had come down the stairs to calm things down. Apparently Marco and Deanne, now sixteen years of age, had been arguing and fighting regularly for about a year. Marco would engage in screaming battles with Deanne, and then would threaten her with physical force. As a result of her fall down the stairs, Deanne sustained a broken leg. Marco had kicked Deanne with his baseball cleats on, so he has been charged with delinquency by means of assault and battery with a dangerous weapon.

Because Marco's mother is not available, and he cannot be returned to his home, he is currently in DYS custody. He tells you that he has been extremely angry at Deanne; she has been having sexual relations with his father Charles since she was fourteen, and her mother Samantha has no idea. Charles told Marco not to tell anyone, because Charles would go to jail and Marco would have to go to a foster home.