**OBJ**

ATTORNEY, ESQ.

Nevada Bar No. Bar #

Address

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.: J

 ) Dept. No.:

**CLIENT,** ) Courtroom:

DOB: Date of Birth )

AGE: Age YEARS OLD )

 )

 A MINOR. )

 )

**OBJECTION TO THE HEARING MASTER’S APPLICATION OF THE**

**INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN**

COMES NOW, CLIENT, by and through her attorney, Attorney, Esq., of Firm, and objects to the application of the Interstate Compact on the Placement of Children to the out-of-state placement in this case. This Objection is based upon the following Memorandum of Points and Authorities, the exhibits attached hereto, the records and files in this case, and such additional documentary and oral evidence as may be presented at the hearing on this Objection.

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

 **NOTICE OF MOTION**

TO: Attorney, Esq., Deputy District Attorney, Attorney for the Department of Family Services;

TO: Attorney, Esq., Attorney for the Natural Mother, Mother;

TO: CPS Investigator, CPS Investigator, Department of Family Services

**PLEASE TAKE NOTICE** that the undersigned will bring the foregoing OBJECTION on for hearing before the Eighth Judicial District Court – Family Division, 601 N. Pecos Road, Las Vegas, Nevada 89101, on the Day day of Month, Year in Courtroom Courtroom **#** at Time.

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

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**I STATEMENT OF FACTS**

 CLIENT, age Age, was brought into the protective custody of the Department of Family Services (“DFS”) on or about Date due to allegations of physical abuse and neglect by her mother, Mother. At the time of the alleged abuse and neglect in the petition, CLIENT resided with her mother, while her father, Father, resided in California. Father was in no way involved with the alleged abuse and neglect that led to CLIENT’s removal.

Although CLIENT grew up in California living with both her natural parents, she moved with her mother to Las Vegas during the summer of Year when her parents separated. Mother and Father did not make any formal custody arrangements and they are still legally married. Despite the distance, CLIENT still has a strong bond with Father. Furthermore, while CLIENT was in Las Vegas with her mother, she maintained phone contact with Father.

 When DFS contacted Father at the end of April, he was very concerned for his daughter’s well-being. He immediately provided a relative placement resource for CLIENT in Las Vegas and made arrangements to be present for the Preliminary Protective Hearing. At the Preliminary Protective Hearing on Date, CLIENT’s father was present without counsel and requested placement of his daughter. The State requested the opportunity to do a further background check on Father, due to suspicions of a history of domestic violence. Thus, Father was appointed an attorney as was Mother. However, the petition filed on Date only included allegations as to Mother, and no allegations against Father.

 At the Entry of Plea Hearing on Date, Father was present again, this time with Father’s Attorney, Esq. as counsel. The State, on behalf of DFS, stated that it was still not clear about the details of the father’s alleged criminal record, but that it was a concern warranting prior approval through the Interstate Compact on the Placement of Children (“ICPC”) process before they could place CLIENT out-of-state. Hearing Master Hearing Master agreed that more information was needed, but prematurely recommended that the ICPC process begin under the Regulation 7 expedited application. This recommendation was issued despite arguments by Father’s Attorney that ICPC should not apply to a non-offending custodial parent with no allegations in the petition. The Court rescinded the appointment ofFather’s Attorney, averring that Father no longer needed representation since he was not on the petition.

At the continued plea hearings on Date and Date, the Court learned that Father had a single domestic violence conviction dating back approximately two decades, and a “weapons charge” from Year. Father informed the Court that he had engaged in counseling those many years ago to address the domestic violence. He also provided a letter that indicated that the “weapons charge” was dismissed as of Date.

CAP argued that the criminal background of Father did not make him unfit and that he was not now or ever a perpetrator of abuse or neglect against CLIENT, and that she must be immediately placed without ICPC approval. CAP alternatively requested that CLIENT be placed with Father on a summer visit immediately following the end of the school year. However, Hearing Master Hearing Master found that ICPC required her to refuse immediate placement with Father due to concerns related to the unclear details of his criminal background. She also recommended that a home study be done in California before CLIENT could go for the summer visit.

CAP requested written findings at the Date hearing. CAP received the “Findings of Fact, Recommendation, and Order of Approval” (hereinafter “Findings and Recommendation”) written by Hearing Master Hearing Master on Date and now timely files this Objection. *See* “Exhibit A.” The issue before the Court is whether Hearing Master Hearing Master was clearly erroneous in recommending: 1) that CLIENT not be immediately placed with her non-offending father, Father; and 2) that ICPC applies to placement of CLIENT with Father.

**II MEMORANDUM OF POINTS AND AUTHORITIES**

1. **This Court Is Vested With The Authority To Review Hearing Master Hearing** **Master’s Recommendation.**

E.D.C.R. Rule 1.46(g) states in pertinent part:

Within 10 days after the evidence is closed, the master must present to the presiding judge all papers relating to the case, written findings of fact and recommendations.

1. Within the above time period, the master must serve upon the parties or their attorney of record and, if no attorney of record, the minor's parent or guardian or person responsible for the child's custodial placement, a written copy of the master's findings and recommendations and must also furnish a written explanation of the right of parties to seek review of the recommendations by the presiding judge.

. . .

5. At any time prior to the expiration of 5 days after the service of a written copy of the findings and recommendations of a master, a party, a minor's attorney or guardian or person responsible for the child's custodial placement may file an objection motion to the supervising district court judge for the division represented by the master for a hearing. Said motion must state the grounds on which the objection is based and shall be accompanied by a memorandum of points and authorities.

6. A supervising district judge may, after a review of the record provided by the requesting party and any party in opposition to the review, grant or deny such objection motion. The court may make its decision on the pleadings submitted or after a hearing on the merits. In the absence of a timely objection motion, the findings and recommendation of the master, when confirmed or modified by an order of the supervising district court judge, become an order of the court.

7. All objection motion hearings of matters initially heard before a master will be before the supervising district judge who may at his or her discretion conduct a trial de novo. The court will review the transcript of the master's hearing, unless another official record is pre-approved by the reviewing judge, and (1) make a decision to affirm, modify, or remand with instructions to the master or (2) conduct a trial on all or a portion of the issues.

8. A supervising district court judge may, on the court's own motion, order that a rehearing of any matter be heard before a master.

9. No recommendation of a master or disposition of a juvenile case will become effective until expressly approved by the supervising district court judge.

Furthermore, this Court is not required to accept the findings and recommendations in this case. The Nevada Supreme Court held that:

Although the juvenile court may adopt the master’s findings of fact unless they are clearly erroneous, a master's findings and recommendations are only advisory, and the juvenile court is not obligated to adopt them. The juvenile court ultimately must exercise its own independent judgment when deciding how to resolve a case.

*See, In the Matter of A.B., a Minor*, 128 Nev. Adv. Op. 70, 291 P.3d 122, 124 (2012).

In the case at hand, the findings were based upon the Hearing Master’s misinterpretation that the ICPC applied towards CLIENT’s placement with her Father. For this reason, CAP respectfully submits that it was clearly erroneous for Hearing Master Hearing Masterto deny immediate placement of CLIENTwith her Father, and requests this Court to reject the Findings and Recommendation dated Date.

**B. In Accordance With *In The Matter Of Parental Rights As To A.G.*, Hearing Master Hearing Master Was Clearly Erroneous In Not Placing The Subject Minor With The Non-Offending Parent.**

In February 2013, the Nevada Supreme Court explored the actions of a lower court that had denied custody to a non-offending parent based on concerns that he was engaging in illegal drug use, but against whom no allegations of abuse or neglect were proven.  *In the Matter of Parental Rights as to A.G.*, 129 Nev. Adv. Op. 13, 295 P.3d 589 (2013). (hereinafter “*In re A.G.*”). The Court emphasized the constitutionally protected fundamental liberty interests and due process rights of parents to custody of their children and to a hearing on parental fitness when that custody is restricted. Thus, *In re A.G.* reasoned that, in the absence of an adjudication of abuse or neglect by the non-offending parent, the social services agency and the lower court should have placed the subject minor with the non-offending parent. Moreover, *In re A.G.* also noted that, despite the proof of illegal drug use by the non-offending parent, the lower court still had an obligation to place the child in his custody because those drug-use concerns were not alleged and adjudicated in the underlying petition. There was not only a lack of due process in that case, but the constitutional rights of parents to custody and control of their children were overwhelmingly in favor of the non-offending parent in that case. Here, Father is not only the non-offending parent, but there are no allegations of abuse or neglect against him. Regardless of the fact that CLIENT was here in Las Vegas with her mother for the past year, Father is the legal parent of CLIENT and there is no custody order restricting or limiting his physical custody over her. As such, Father has the right to physical custody of his child. Also, CLIENT desires to be with him, and the law states it is in her best interest to be with a safe, protective parent.

*In re A.G.* also explains that social service agencies, such as DFS, can serve the government’s interest in protecting the welfare of a child as long as there is “an adequate basis for concern” and due process rights are given. *See Id.* at 597. While the agency has the obligation to ensure that placement with the non-offending parent is safe, that obligation also includes filing a petition of abuse or neglect when the safety concerns necessitate removal. *Id*. Similar to the father in *In re A.G.*, the concerns of DFS are not alleged in the petition, thus not affording Father due process if his child is being kept from him based on those concerns. Specifically, Hearing Master Hearing Master reasoned that the Court and DFS have some concerns about Father’s ability to care for CLIENT in light of the unclear convictions from before CLIENT’s birth. *See* “Exhibit A.” However, DFS and its counsel are not averring that allegations of abuse or neglect should be brought against Father. *See Id*. 597 (“…if social services had concerns over Kory’s drug use and its effect on his ability to care for A.G., Social Services should have maintained a petition for neglect as to Kory and sought to substantiate allegations of Korey’s neglect”). The Hearing Master’s attempt to adduce evidence of how Father resolved his criminal charges is not the due process promised by the constitutional precedent, nor N.R.S. 432B. In light of the reasoning in *In re A.G.*, Father’s right to custody of his child take precedent over the un-alleged concerns. *See Id*. at 597 (“A parent’s fundamental liberty interest in the care, custody and control of his child does not ‘simply evaporate’ because the parent has not been a model parent or may have lost temporary custody of his child to Social Services”)(quoting *Santosky v. Kramer)*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

In addition to the constitutional rights of the parent, the statutory preference for placing a child with the non-offending parent should not be so easily dismissed in the absence of a “finding of parental unfitness or substantial endangerment to the child’s welfare.” *Id*. at 595. Because N.R.S. 432B requires reasonable efforts to preserve and reunify children with their families, children must be placed with their families when it is safe to do so. *Id*. at 596. *In re A.G.* noted that, in restoring custody to the non-offending parent, “the state’s interest in protecting the welfare of children is served, because in the absence of findings of parental fitness, a parent is presumed to make decisions in the best interests of his or her child. *Id*. at 595-596 (also noting that there is a general preference for placing the child with a fit parent where the child was removed due to the behavior of the other parent). In this case CLIENT’s “health and safety” should be the “paramount concern.” *Id*. at 596. Yet, no party has alleged or has evidence that Father poses a risk of immediate or imminent, foreseeable, significant, observable and/or specific risk of harm to CLIENT. Therefore, this Court must act in the best interests of CLIENT and in the interests of the rights of Father, and place CLIENT with her father immediately.

**C. ICPC Does Not Apply When A Court Orders A Child Sent To A Legal Parent Who Resides Out-of-State.**

Article I (Purpose and Policy) of the ICPC, states that “It is the purpose and policy of the party states to cooperate with each other in the interstate *placement* of children….” (emphasis supplied). Article II (Definitions), defines a “Placement” as, “the arrangement for the care of a child *in a family free or boarding home, or in a child-caring agency or institution* ….” (emphasis supplied). Article III (Conditions for Placement), states:

(a)A sending agency shall not send, bring or cause to be sent or brought into any other party state any child *for placement in foster care or as a preliminary to a possible adoption* unless the sending agency complies with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state *for placement in foster care or as a preliminary to a possible adoption*, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state.

(emphasis supplied). N.R.S. § 127.330, Interstate Compact on Placement of Children.

The Nevada Supreme Court has stated that “It is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act." *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). Therefore, "where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent." *McKay*, 102 Nev. at 648, 730 P.2d at 441.

Courts in other jurisdictions have strictly construed the language in their states’ enactment of the ICPC to limit the applicability of ICPC to out-of-state placements for foster care or preliminary to adoption, and denied that the ICPC is ever applicable to the transfer of a child to his or her natural parent. *See, McComb v. Wambaugh*, 934 F.2d 474, 482 (3rd Cir. 1991) (United States Court of Appeals for the Third Circuit concluded that the ICPC does not apply when a court in one state directs that a child be taken from foster care and sent to a natural parent in another participating state.); *Arkansas Dept. of Human Services v. Huff*, 347 Ark. 553, 65 S.W.3d 880 (2002) (Court held that the ICPC, read as a whole, was intended only to govern placing children in substitute arrangements for parental care, such as foster care or adoption.). *See also*, *In re Alexis O*. 157 N.H. 781, 959 A.2d 176 (2008) (“The ICPC’s history confirms that its drafters intended it to apply only to placement of a child for foster care or as a preliminary to adoption. The drafters did not intend for it to apply to natural parents.” 157 N.H. at 789, 959 A.2d at 183)., *State Div. of Youth And Family Services v. K.F*., 353 N.J. Super 623, 803 A.2d 721 (2002); *Tara S. v. Superior Court*, 17 Cal. Rptr. 2d 315, 13 Cal.App.4th 1834 (1993) (Court stated that interpreting the definition of "placement" as including a parent's home "does not make sense in light of article 3 which limits the ICPC to foster care and possible adoption." 13 Cal. App.4th at 1837-38); *In re Johnny S*., 47 Cal Rptr. 2d 94, 49 Cal.App.4th 969 (1995) (“[W]e are persuaded that the ICPC is intended to apply only to interstate placements for foster care and preliminary to a possible adoption, and not to placements with a parent”. *Id*. at 100, 49 Cal.App.4th 977.) ; *In re John M*, 47 Cal. Rptr. 3d 281; 141 Cal. App. 4th 1564 (2006) (“For the reasons stated in *Tara S. v. Superior Court* (citation omitted) and *In re Johnny S*. (citation omitted), we conclude that compliance with the *ICPC* is not required for placement with an out-of-state parent.” 47 Cal. Rptr. 3d at 288).[[1]](#footnote-1)

Since the placement at issue in this case is that of CLIENT with her natural father in California, by the reasoning of these cases, the ICPC does not apply. Hearing Master Hearing Master reasoned that the Court would have to submit for ICPC if /when it takes formal jurisdiction and establishes warship following the scheduled adjudicatory hearing. *See* “Exhibit A.” However, it follows from *In re A.G.,* that the Court could establish jurisdiction over CLIENT through Mother, yet not keep her a ward of the state in light of the availability of a protective, non-offending parent. Essentially, the State would achieve its goal of substantiating the petition against mother, while DFS could uphold it duty of reasonable efforts and not continue to unnecessarily “inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.” Id. at 595 (quoting *Troxel v. Granville*, 530 U.S. 57, 68-69, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

**D. Even If This Court Believes That The ICPC Might Apply To Transfers To Natural Parents In Other Fact Situations, It Clearly Does Not Apply To Father, Who Is A Non-Offending Parent Against Whom There Are No Allegations Of Unfitness, Abuse Or Neglect.**

Article VII of the ICPC gives the Nevada ICPC Administrator the authority to adopt regulations to carry out the terms and provisions of the ICPC. “The executive head of each jurisdiction party to this compact shall designate an officer to act as the administrator and general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, may adopt regulations to carry out more effectively the terms and provisions of this compact.” N.R.S. § 127.330, Interstate Compact on Placement of Children, Article VII, Compact Administrator.

The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) consists of the ICPC administrators from all 50 states, the District of Columbia and the U.S. Virgin Islands. Acting as a body and pursuant to Article VII, the AAICPC promulgates the rules and regulations “to carry out more effectively the terms and provisions of this compact.”

Regulation 3, effective as of October 1, 2011, provides in pertinent part:

 3. Placements made without ICPC protection:

(a) A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent. Receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.[[2]](#footnote-2)

In Hearing Master Hearing Master’s Findings and Recommendation, she reasons that the “concerns” expressed by DFS regarding Father’s criminal background remove this situation from the exemption in Regulation 3. *See* “Exhibit A.” However, this interpretation is clearly erroneous, because Regulation 3 requires “evidence that the parent is unfit” which, in this court system, is achieved through an adjudicatory hearing. In this case there are no filed allegations that his criminal background makes him “unfit” and State is not seeking to present evidence of Father being an unfit parent in its petition of abuse or neglect. Even if the conviction for domestic violence is a red-flag triggering the presumptions of N.R.S. 432B, the Court must weigh the facts that 1) domestic violence conviction dates back almost twenty years; 2) Father has repeatedly stated in court that he took classes at the time of the conviction; and 3) he has not had any other convictions for domestic violence since then. All of these factors are sufficient to assuage the concerns of the Court. Furthermore, the lack of any verifiable evidence that Father would pose a substantial risk of endangerment to CLIENT solely by virtue of his convictions, is also paramount to why the Hearing Master’s denial of placement was clearly erroneous.

**III CONCLUSION**

Commencement of an ICPC proceeding will unduly delay CLIENT’s reunion with a loving parent, and is not in CLIENT’s best interests. It is both cruel and unnecessary to require CLIENT to languish in limbo while ICPC slowly winds its way through the usual bureaucratic morass, when she has a loving, competent parent waiting to care for her. CLIENT respectfully requests that this Court find that Hearing Master Hearing Master was clearly erroneous in her denial of placement and recommendation that ICPC proceedings and a home study be approved before CLIENT could be placed with her father. CLIENT also respectfully requests that this Court order the Clark County Department of Family Services to terminate any ICPC placement efforts and immediately send her to her father in the State of California, or release her to her father and allow him to transport her back to California.

Respectfully submitted this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

**CERTIFICATE OF SERVICE**

 I HEREBY CERTIFY that on the Day day of Month, Year, I placed a true and correct copy of the forgoing **OBJECTION TO THE HEARING MASTER’S APPLICATION OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN**, postage fully prepaid, in the United States Mail addressed as follows:

 Attorney, Esq.

 Deputy District Attorney Juvenile

Family Court

601 N. Pecos Road, Room 470

Las Vegas, Nevada 89101

Attorney for the Department of Family Services

Attorney, Esq.

Address

Attorney for the Natural Mother, Mother

CPS Investigator, Case Manager

Department of Family Services

701 N. Pecos Road, Bldg. K

Las Vegas, Nevada 89101

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Exhibit “A”

1. A 1988 Opinion of the Nevada Attorney General (Opinion No. 88-4 Children: Interstate Placement Compact (May 24, 1988) does not compel a different result: this opinion was written prior to the more recent court cases analyzing the ICPC and declining to extend it to include a custody change in favor of a non-offending parent. Moreover, the reasoning of this opinion is suspect and the conclusion creates an absurd result – “When a child is sent or brought, or is caused to be sent or brought, into another state which is party to the ICPC, it is necessary for the sending agency (the court, the Welfare Division, or another agency which sends or brings or causes to be sent or brought the child into the other state) to retain jurisdiction and custody under article V of the ICPC until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state.” If the AG is correct, the State of Nevada could have legal and financial obligations toward a child that exceeds that of his/her natural parent **until the child reaches the age of majority** (since obviously, a natural parent cannot adopt his or her own child). [↑](#footnote-ref-1)
2. In *McComb v. Wambaugh*, 934 F.2d 474 (3d Cir. 1991), the court acknowledged that AAICPC Regulation 3, states that "`placement' as defined in Article II(d) includes the arrangement for the care of a child in the home of his parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, or non-agency guardian making the arrangement for care as a plan exempt under Article VIII(a) of the Compact." McComb v. Wambaugh, 934 F.2d at 481. The McComb court noted that “A regulation contrary to the statute under which it was promulgated cannot be upheld (*citing Yamaha Motor Corp., U.S.A. v. Richard's Honda Yamaha*, 344 Ark. 44, 38 S.W.3d 356 (2001) and concluded that the regulation expands the scope of the Compact beyond that set out in Article III. *McComb v. Wambaugh, supra*. ) A California court found this reasoning persuasive: “regulations requiring such advance approval for placement with a parent are neither binding nor persuasive in light of the limitations expressed in the statute itself." *In re Johnny S*., 40 Cal.App.4th at p. 978.

Other courts have held that AAICPC had the authority to promulgate Regulation 3 and that transfers to natural parents are “placements” to which the ICPC applies.

Because the facts in this case would exempt it from the ambit of the ICPC under Regulation 3, this court does not need to decide whether the promulgation of Regulation 3 exceeded the AAICPC’s authority.

 [↑](#footnote-ref-2)