**OBJ**

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

)

)

JOHN DOE, )

DOB: )

AGE: YEARS OLD )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**OBJECTION TO HEARING MASTER \_\_\_\_\_\_\_\_’S FINDINGS OF FACT, RECOMMENDATION AND ORDER FOR TERMINATION OF WARDSHIP FOR JOHN DOE**

COMES NOW, JOHN DOE, by and through his attorney, \_\_\_\_\_\_\_\_\_\_\_\_\_, Esq. of FIRM and brings this Objection to Hearing \_\_\_\_\_\_\_ Findings of Fact, Recommendation and Order for Termination of Wardship for JOHN DOE.

This Objection is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and such other documentary and oral evidence as may be presented at the hearing of this objection.

DATED this \_\_\_\_\_\_\_ day of December, 2011.

**NOTICE OF MOTION**

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., DEPUTY DISTRICT ATTORNEY, JUVENILE DIVISION;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_, CASA FOR JOHN DOE

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_, DEPARTMENT OF FAMILY SERVICES CASEWORKER;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Objection on for hearing before the above-entitled Court on the **\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2011.**

DATED this \_\_\_\_\_\_\_ day of December, 2011.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**STATEMENT OF FACTS**

\_\_\_\_\_\_\_\_\_\_\_\_\_, JOHN DOE, \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ were removed from their home on June 9, 2008 after their parents were arrested and charged with felony abuse and neglect related to the tragic death of the boys’ younger brother, \_\_\_\_\_\_\_\_\_\_\_\_\_. \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ plead no contest to Amended Petition Number One in the dependency action and the boys were subsequently made Wards of the Court. In the criminal trial, both parents were found guilty of involuntary manslaughter and child abuse and neglect. Both parents received lengthy prison sentences this year as a result of their convictions.

\_\_\_\_\_\_\_\_\_\_\_\_\_, JOHN DOE, \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ were originally placed at St. Jude’s Ranch after removal. On June 6, 2009, all four boys were placed with the maternal grandparents, \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ in Buhl, Idaho. On December 23, 2009, JOHN DOE returned to Las Vegas and was placed in a group home, foster placement after Mr. and Mrs. \_\_\_\_\_\_\_\_\_\_\_\_\_ indicated that they could no longer care for JOHN DOE due to behavioral problems.

JOHN DOE returned to Idaho on July 3, 2011 after the end of the 2010-2011 school year on a 30 day ICPC visit. During that time, JOHN DOE had worked out the situation with his grandmother sufficient enough that it was agreed that he would remain in Idaho with his family for his senior year. ICPC was re-initiated with his grandparents (he had already been placed previously on a valid ICPC in June 2009). While waiting for the ICPC decision, on July 28, 2011, HM \_\_\_\_, after the matter was placed on a NARD slip, denied extension of the 30 day visit and indicated that JOHN DOE needed to return to Nevada. After staffing the issue with DA \_\_\_ and DFS, DA \_\_\_\_\_ agreed with CAP that pursuant to ICPC, a home visit during the Summer lasts until the end of Summer vacation. Subsequently, Idaho denied the ICPC under the premise that there were too many people in the home and that the home life was chaotic. This was quite a shock to everyone involved in this case. During August, the members of JOHN DOE’s “team” tried to work out the issue with Idaho ICPC. DFS was not in agreement with bringing JOHN DOE back to Nevada. In fact, even DFS’ civil district attorney during a phone conference call challenged the Idaho ICPC decision as nonsensical.

Regarding permanency, \_\_\_\_\_\_\_\_\_\_\_\_\_ exited the system after he turned 18 years old in August, 2010. \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ are slated to be adopted by maternal grandparents (\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ relinquished their rights as to \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ on April 18, 2011). JOHN DOE, who is in his senior year of high school, would very much like to avail himself of AB 350 and remain under court jurisdiction which is the issue at hand before the Court.

As the Court is aware, Assembly Bill 350, enacted in NRS 432B.591 through 432B.595, went into effect during the 2011 Legislative Session. AB 350 allows young adults to voluntarily remain under the Juvenile Court’s jurisdiction beyond the age of 18 up to age 21. The young adult will be able to receive DFS services as long as they are working toward defined goals set forth in their transition plan; yet DFS will no longer be the legal custodian.

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**LEGAL ARGUMENT**

1. **The Interstate Compact for the Placement of Children (ICPC) is Inapplicable in Matters Where a “Child” Avails Himself of AB350**

1. **ICPC Affects the Jurisdiction of Only A Sending State’s Agency**

The ICPC is an interstate compact between Nevada[[1]](#footnote-1) and all of the United States and territories, which addresses the movement of foster children from one state to another. Specifically stated in Article I of the ICPC, entitled “Purpose and Policy,” the Compact states that the purpose of the compact is to ensure that “the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.” Art. I(b). Thus, the ICPC, in Article I, establishes that the state where the child is to reside must ensure that the child’s placement in that state are appropriate and meet the standards of the sending state.

Moreover, within the text of the ICPC are several requirements which must be met before a child is deemed to be protected under the ICPC. First, the child must meet the definition of a child, as stated therein. According to the ICPC, a child is a person “who, by reason of minority, is legally subject to parental control, guardianship or similar control. Art. II(a). Further, Article III of the ICPC sets forth additional conditions which the state where the child is to be placed must comply with. Therein, the ICPC elaborates that “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 the children therein.” Art. III(a) (***emphasis added***). Again, nowhere in the ICPC Article III does it state the jurisdictional power of a court, but rather only the limits of the jurisdiction of the sending state’s agency.

Lastly, and perhaps the strongest argument against the idea that the ICPC affects a juvenile court’s jurisdiction over a child placed interstate, is derived from Article V of the ICPC, entitled “**Retention of Jurisdiction**.” Pursuant to Art. V(a), the ***sending agency*** retains jurisdiction over the child in matters relating to the child’s custody, supervision, care, treatment, and disposition as it would have had if the child remained in Nevada, ***until*** the child is adopted, reaches majority, becomes self-supporting, or is discharged by the receiving state. Again, the ICPC is silent on the jurisdiction of the juvenile court in the sending state. Accordingly, even assuming that a child was once under the protections of the ICPC, Art. V indicates that the sending agency’s jurisdiction over the child ceases where the child turns 18-years-old, is adopted, becomes self-supporting, or is discharged.

Here, JOHN DOE turned 18 on October 14, 2011. Pursuant to Art. V(a), DFS’ jurisdiction ended. ICPC is not required for JOHN DOE to take advantage of AB350. The “receiving state”, Idaho, will not be required to supervise or issue reports relative to JOHN DOE. Therefore, ICPC is not implicated at all in this case.

1. **NRS 432B.591 *et seq*., contains language addressing the legal custody issue as well as the minimum contact DFS shall have to ensure the young adult is progressing towards their goals set forth in their transition plan.**

NRS 432B.591 through 432B.595, sets forth the requirements of both the “child” and DFS. Under NRS 432B.594(4) (a) and (b), if the child requests that jurisdiction be retained past 18, the child must enter into a written agreement with DFS. The agreement, which must be filed with the court, must acknowledge that:

a. The retention is voluntary on the part of the child;

b. The child is entitled to continue to receive DFS services and monetary payments made directly to the child or to an agreed upon third party (payments can’t exceed foster board payments) consistent with their transition plan (transition plan is addressed in NRS 432B.595).

In addition, per NRS 432B.594(4)(c), it states that “DFS is ***not the legal custodian*** of the child after 18, and all proceedings pursuant to NRS 432B.410 through 432B.590 will terminate**.** Some examples are: (1) Six-month review hearings (NRS 432B.580); (2) Annual dispositional hearings (NRS 432B.590); (3) Motions for modification or revocation of an order (NRS 432B.570); and, (4) Protective custody hearings (NRS432B.470).

Further, under NRS 432B.595(2), it sets forth DFS’ responsibilities which are to:

a. Monitor the independent living plan and adjust as necessary;

b. Contact the child by phone at least one time a month and make in person contact at least once every 3 months;

c. Ensure that the child meets with a person who will guide and support the child and also make the child aware of services that are available to the child;

d. Conduct a meeting with the child at least 30 days but not more than 45 days before court jurisdiction terminates to determine whether the child needs any additional guidance.

Thus, NRS 432B.591 *et seq*., AB350 addresses the expectations for both the “child” and DFS. A transition plan that sets forth the goals the “child” is working towards along with the Agreement to remain under Court jurisdiction will be filed with the Court. DFS is no longer the legal custodian but will provide services to the child so long as they are making efforts towards accomplishing the goals set forth in the transition plan. DFS will check in with the “child” by phone monthly and have quarterly face to face check-ins with the “child”. A dispute resolution mechanism is built in under NRS 432B.594 that culminates in a Court hearing if DFS and the “child” cannot informally work out any impasse.

JOHN DOE, although classified as a “child” as a term of art under AB350, is an adult and is no longer in the legal custody of DFS. Accordingly DFS has no liability for JOHN DOE. AB350 is in essence a contractual relationship between the “child” and DFS with built-in court oversight should any dispute regarding the provision of services be unable to be resolved informally.

JOHN DOE is currently on an Independent Living Agreement where he receives a monthly check and uses a portion of that money to pay rent to his grandparents. Under AB350, this arrangement would continue. JOHN DOE would receive his AB350 check (which would be the same amount) and he would pay rent to his grandparents. Under AB350, so long as JOHN DOE is making progress toward his goals set forth in his transition plan, he would receive this money. Again, there is a dispute resolution mechanism outlined in NRS 432B.594 (5) and (6) if DFS feels that the “child” is not making a good faith effort to achieving their goals and wants to make a recommendation that the Court terminate jurisdiction.

Finally, as it has played out for local “children” opting to utilize AB350, DFS has conceded that it cannot dictate where a “child” may live or with whom they live. Again, this is due to the fact that DFS is no longer the legal custodian. The role of DFS has changed for the “child” that avails himself of AB350. There should be no difference for a “child” out of state. Both parties have their obligations to fulfill under AB 350 and both parties have recourse should an impasse arise. JOHN DOE should be allowed to access AB350. This is precisely the type of “child” that the law was meant to help. He is a senior in high school who is over 18 who wants to finish his senior year in a place where his brothers and extended family are located without having to worry about money.

**CONCLUSION**

AB350 was enacted during the 2011 legislative session to assist older children in the foster care system and to enable them to receive DFS services with Court jurisdiction being retained beyond 18 to age 21. The legislation was spurred by the incomprehensible proposition that some were advancing that the Dependency Court did not have jurisdiction over children once they turned 18 and therefore all wards of the Court over 18 were to have their jurisdiction summarily terminated. AB350 does not expressly address ICPC. However, as set forth above, the fact that ICPC itself defines “retention of jurisdiction” coupled with the fact that AB350 expressly indicates that legal custody for DFS ends leads to the conclusion that JOHN DOE and other similarly situated youth can access the AB350 services in another jurisdiction.

Accordingly, it is respectfully requested that this Court find that ICPC is inapplicable and that JOHN DOE may avail himself of AB350.

DATED this \_\_\_\_\_\_\_ day of December, 2011.

***CERTIFICATE OF MAILING***

I HEREBY CERTIFY that on the \_\_\_\_\_\_\_ day of December 2011 I placed a true and correct copy of the foregoing ***OBJECTION TO HEARING MASTER \_\_\_\_\_’S FINDINGS OF FACT, RECOMMENDATION AND ORDER FOR TERMINATION OF WARDSHIP FOR*** JOHN DOE, postage fully prepaid, in the United States Mail addressed as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

An employee of FIRM

1. Nevada codified the ICPC in 1985, with the enactment of NRS 127.320 *et seq.* [↑](#footnote-ref-1)