**PRMEM**

ATTORNEY, ESQ.

Nevada Bar No. Bar #

Address

**EIGHTH JUDICIAL DISTRICT COURT**

**FAMILY DIVISION - JUVENILE**

**CLARK COUNTY, NEVADA**

In the Matter of the Parental Rights as to: ) Case No.: J

) Dept. No.:

**CLIENT 1,**  )

**CLIENT 2,** )

**CLIENT 3,** )

**CLIENT 4,** )

)

MINORS. )

)

**PRETRIAL MEMORANDUM**

COMES NOW, CLIENT 1, CLIENT 2, CLIENT 3, and CLIENT 4 (the “Minor Children”), by and through their attorney, Attorney, Esq., of Firm,and hereby files this Pretrial Memorandum in compliance with EDCR 2.67.

There was no pretrial conference held in this matter. EDCR 2.67(b).

Pursuant to EDCR 2.67(b), the following information is presented to the Court for consideration:

1. BRIEF STATEMENT OF FACTS

Pursuant to the Second Amended Petition, the Minor Children came into care due to natural mother’s substance abuse, natural father’s engagement in acts constituting domestic violence, and natural father’s neglect in care of CLIENT 1. *See* Second Amended Petition. The date of removal is listed as Date.

As of Date, the Department was recommending the primary permanency goal be changed back to Reunification with the natural parents with a concurrent goal of TPR and adoption. *See* Report for Permanency and Placement Review, filed on Date. On Date, the Minor Children were approved to reunify with natural mother under a trial home visit. *See* Report for Permanency and Placement Review, filed on Date.

On Date, natural mother was arrested due to an altercation with fictive kin in the home, and the children were removed from the home. *Id.* The natural mother and the verbal children who witnessed the altercation have consistently maintained that the altercation between the fictive kin and the natural mother that led to natural mother’s arrest was not the fault of natural mother and that the fictive kin was the aggressor in the situation.

As a result of the altercation, natural mother was placed in custody until approximately Date. Since that time, natural mother has been consistent in her visits with the children. *Id.* Natural mother has verbalized her desire to again be reunified with her children. Her children very much wish to be reunified with natural mother and/or natural father Father. The two older children affectionately refer to him as “Daddy Father” even though he is the natural father to only the two youngest children.

1. LIST OF CLAIMS FOR RELIEF

N/A

1. LIST OF AFFIRMATIVE DEFENSES

N/A

1. LIST OF CLAIMS OR DEFENSES TO BE ABANDONED

N/A

1. LIST OF EXHIBITS

The Minor Children hereby join in and incorporate by reference the Petitioner’s Witness and Exhibit List, filed on Date, and the Petitioner’s Additional Witnesses List, filed on Date.

1. ANY AGREEMENTS AS TO THE LIMITATION OR EXCLUSION OF EVIDENCE

N/A

1. LIST OF WITNESSES

The Minor Children hereby join in and incorporate by reference the Petitioner’s Witness and Exhibit List, filed on Date, and the Petitioner’s Additional Witnesses List, filed on Date.

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1. BRIEF STATEMENT OF EACH PRINCIPAL OF LAW WHICH MAY BE CONTESTED AT TIME OF TRIAL

The United States Supreme Court has held that parents have a fundamental liberty interest in the care, custody, and management of their children, which is protected by the Due Process clause of the Constitution. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). The Indian Child Welfare Act (“ICWA”) provides that no termination of parental rights may be ordered “in such proceedings in the absence of a determination, supported by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in the serious emotional or physical damage to the child,” *In re O.S.*, 701 N.W.2d 421, 424 (S.D. 2005) (emphasis added).

It must be shown, beyond a reasonable doubt, that the conduct of the parents or Indian custodian, is likely to cause the child to suffer serious emotional or physical damage if placed with the parents or Indian custodian prior to terminating their rights to the child. *E.A. v. State*, 46 P.3d 986, 992 (Alaska 2002). This proof must include qualified expert testimony based on the particular facts and issues of the case. *Id.*

ICWA applies to a termination of parental rights proceeding even when it is the non-Indian parent whose rights are at issue. *In re N.S.*, 474 N.W.2d 96 (S.D. 1999).

1. Parental fault. Counsel for the Minor Children’s position is that the party pleading to have parental rights terminated cannot meet the burden of proof required to demonstrate failure of parental adjustment, risk of serious injury if the children are returned to the natural parents, and parental unfitness. *See K.N. v. State*, 856 P.2d 468 (Alaska 1993).
2. Best Interest of the Children. Counsel for the Minor Children’s position is that it is not in the best interest of the children that natural parents’ rights be terminated as the Minor Children are very bonded to natural mother Mother and natural father Father. The children were even briefly reunified with natural mother earlier this year and very much want to be returned to natural mother and/or natural father of the younger two children, Father.

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1. ESTIMATE OF TIME REQUIRED FOR TRIAL

2 days

1. ANY OTHER MATTER WHICH COUNSEL DESIRES TO BRING TO THE ATTENTION OF THE COURT PRIOR TO TRIAL

These children are very bonded to their natural mother, Mother, natural father to the younger two children, Father, and to each other.

Natural mother has recently identified a relative who may be willing to take the children. Counsel is concerned that active efforts to place the Minor Children with family members may not be deemed as high of a priority because an “adoptive resource” has been found for the Minor Children. Given that the proposed adoptive resource has never met the Minor Children and vice versa, and that the natural parents’ rights have not been terminated, it appears prudent to explore every option available to the Minor Children that would keep them with their family.

The Department previously found a purported adoptive resource for the Minor Children earlier this year; however, when the purported adoptive resource actually met all four children, they decided they were only willing to adopt the older two children. As this new proposed adoptive resource has not even met the Minor Children, it appears to be premature to label them as adoptive at this point in time.

DATED 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 served the foregoing **PRETRIAL MEMORANDUM** by the Court’s electronic system (EFS E-File & Serve) and/or depositing in the U.S. Mail in a sealed envelope with first-class postage fully prepaid thereon, to the following:

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

An employee of

Firm