**PRPLY**

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,** )

DOB: Date of Birth )

AGE: Age YEARS OLD ) Hearing Date:

) Hearing Time:

A MINOR. )

)

**SUBJECT MINOR’S REPLY TO:**

**DISTRICT ATTORNEY’S “OPPOSITION TO SUBJECT MINOR’S ‘NOTICE OF REQUEST FOR TERMINATION OF PARENTAL RIGHTS MOTION TO BE HEARD BEFORE A DISTRICT COURT JUDGE’ ”**

**AND OPPOSITION TO:**

**DISTRICT ATTORNEY’S “AMENDED MOTION TO STRIKE CHILDREN’S ATTORNEYS PROJECT ‘NOTICE OF REQUEST FOR TERMINATION OF PARENTAL RIGHTS MOTION TO BE HEARD BEFORE A DISTRICT COURT JUDGE’ ”**

**COMES NOW,** Subject Minor, CLIENT**,** by and through his attorney, Attorney, Esq., of Firm, and hereby files CLIENT’s REPLY TO: DISTRICT ATTORNEY’S “OPPOSITION TO SUBJECT MINOR’S ‘NOTICE OF REQUEST FOR TERMINATION OF PARENTAL RIGHTS MOTION TO BE HEARD BEFORE A DISTRICT COURT JUDGE’ ” AND OPPOSITION TO: DISTRICT ATTORNEY’S “AMENDED MOTION TO STRIKE CHILDREN’S ATTORNEYS PROJECT ‘NOTICE OF REQUEST FOR TERMINATION OF PARENTAL RIGHTS MOTION TO BE HEARD BEFORE A DISTRICT COURT JUDGE’ ”.

This Reply and Opposition are based upon the following Memorandum of Points and Authorities, the papers and pleadings on file herein, the exhibits attached hereto and such other documentary and oral evidence as may be presented at the hearing on this matter.

DATED this Day day of Month, Year.

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

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **STATEMENT OF FACTS**

On May 17, 2013, the three Juvenile Dependency District Court Judges issued Administrative Order 13-02: Order of Appointment of Juvenile Hearing Masters as Special Masters Pursuant to NRCP 53 to Hear State Initiated Termination of Parental Rights Cases. (See Exhibit 1.) In the interest of judicial economy and expeditious resolution, the Court appointed Special Masters and gave them the authority to hear all aspects of the termination of parental rights cases, *except* in contested hearings. Pursuant to this Order, Hearing Masters heard uncontested “prove-ups” and contested matters were set for trial before the District Court Judge assigned over each Hearing Master. Termination cases proceeded in this manner until approximately October of 2015.

On October 8, 2015, Chief Judge David Barker issued Administrative Order 15-12: In the Matter of Access to Justice for Victims of Child Abuse. (See Exhibit 2.) Based on the findings and recommendations of the Clark County Blue Ribbon for Kids Commission, cases would be equally distributed between six judicial officers, a mix of judges and hearing masters, “who would be assigned and be responsible for adjudicating dependency matters assigned to him or her from case initiation through case resolution under a one-judge-one-family case assignment and calendaring system” so that children and families would “have the same judicial officer for the life of the case.” (See Exhibit 2.) Pursuant to this Order, Hearing Masters began hearing all aspects of the cases assigned to them, including termination of parental rights actions.

Just a few months later, beginning in the January of 2016 and ending in April 2016, a contested termination of parental rights trial regarding a foster child, who would become known as “K.J.B.” was conducted by a hearing master. After the hearing master recommended that her rights be terminated, the natural mother filed an objection and the matter was reviewed by the Presiding Judge, who ultimately terminated the natural mother’s rights. Natural Mother promptly filed an appeal to the Supreme Court of Nevada, challenging the authority of the hearing master to preside over her termination of parental rights trial. On January 18, 2018, the Supreme Court of Nevada, issued its ruling, ordering reversal and remand, finding that the master lacked authority to preside over the parental rights termination hearing. Matter of K.J.B., No. 71515, 409 P.3d 52 (Nev., Jan 18, 2018, *rehearing denied* June 22, 2018)(unpublished decision).

Almost immediately following the Supreme Court’s Decision in KJB, the Juvenile Dependency Court adjusted its practices in response. Uncontested prove-up termination of parental rights hearings were now being heard by the three District Court Judges, either with parties being sent to their courtrooms from the Hearing Masters’ calendars, or with the Judges physically coming into the Hearing Masters’ courtrooms at the end of their calendars to handle the uncontested termination matters. Contested termination of parental rights trials were set before senior judges who were specially brought in to hear them. These adjustments to the previous practice regarding termination of parental rights proceedings continued from late January until approximately mid-April 2018.

As of January 1, 2018, an amendment to NRS 432B, the statute governing juvenile dependency matters, went into effect. Previously, state-initiated termination of parental rights actions were filed as separate actions in “D” cases pursuant to NRS 128. Pursuant to this amendment, termination of parental rights actions are now as motions within the NRS 432B “J” cases.

In mid-April 2018 some of the hearing masters began reading a notice at the beginning of all termination of parental rights hearings. The Notice informed parties that their cases were assigned to hearing masters and that they are entitled to request that their termination of parental rights issues be heard by district court judges. (See Exhibit 3.) It further indicated that failure to exercise the right to have a district court judge hear the termination matter constitutes a waiver of any claim that the hearing master lacked authority to hear it. (See Exhibit 3.) At the time this notice started being given, the Court also went back to having hearing masters hear all aspects of these cases, including contested and uncontested termination of parental rights motions.

On June 22, 2018, in the case involving K.J.B., the Supreme Court of Nevada denied the Department of Family Services’ Petition for Rehearing without any further comment or analysis. Shortly thereafter, on July 19, 2018, in this case, the Subject Minor CLIENT filed a

Joinder to the District Attorney’s Motion to Terminate Parental Rights and a Notice of Request for Termination of Parental Rights Motion to be Heard Before a District Court Judge, expressing concern about proceeding before a hearing master in light of the Supreme Court of Nevada’s decision in Matter of K.J.B., No. 71515, 409 P.3d 52 (Nev., Jan 18, 2018, *rehearing denied* June 22, 2018)(unpublished decision).

On July 25, 2018, the District Attorney filed a Motion to Strike Children’s Attorneys Project “Notice of Request for Termination of Parental Rights Motion to Be Heard Before a District Court Judge,” which CLIENT filed an Opposition to on August 13, 2018. Subsequently, without leave of the Court, the District Attorney filed both an Amended Motion to Strike Children’s Attorney’s Project “Notice of Request for Termination of Parental Rights to be Heard Before a District Court Judge” and Opposition to Subject Minor’s “Notice Requesting Termination of Parent Rights Motion to be Heard Before a District Court Judge” on August 14, 2018.

1. **LEGAL ARGUMENT**
2. **The District Attorney Minimizes the Concerns of the Supreme Court of Nevada in *KJB* and Makes Numerous Arguments Attempting to Distinguish the Motion in the Current Case from the Concerns Expressed by the Supreme Court, However, None Clearly Resolves the Issues**

Throughout its filings in this case, the District Attorney tries to convince this Court that despite the Supreme Court of Nevada’s Concerns in KJB, the hearing masters clearly have authority to hear termination of parental rights actions. CLIENT is not sure that is the case and does not wish to risk his permanency and chance facing months, if not years, of uncertainty that a potential challenge to the Supreme Court of Nevada could bring.

1. **First, the District Attorney Argues That NRCP 53 Permits Hearing Master Norheim to Preside Over This Case, However, NRCP 53 Did Not Save the Decision in *KJB* and It is Unclear that This is a Proper Use of Rule 53.**

The District Attorney points to NRCP 53 as allowing the Court to appoint a Hearing Master to hear termination of parental rights actions. The first problem with this argument is that it is not a new rule. If this rule really does confer the necessary authority upon hearing masters, then one would think the Supreme Court would have relied upon it to come to a different result in KJB. Given that Rule 53 did not save the hearing master’s decision in that case, CLIENT would urge this Court not to risk his permanency on it here.

Although the Court has relied upon NRCP 53 to deem the hearing masters special masters in both Administrative Order 13-02 and in the Notice it began issuing in April 2018, it is not clear such a designation comports with the spirit nor the requirements of that rule. Subsection (a)(1) talks about the special master being paid by the parties or out of the amounts in dispute. That is certainly not the financial arrangement hearing masters in juvenile dependency have. The rule also seems to require that the reference to the special master be made by specific orders in individual cases. NRCP 53(c) reads in part:

**Powers**. The order of reference to the master may specify or limit the master’s powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for filing the master’s report.

There is no such order in this case.

Probably most compellingly, subsection (b) explains that the reference to the master should be the exception, not the rule. It specifically indicates that in non-jury matters a referral to a special master should only be used in “matters of account and difficult computations” and “upon a showing that some exceptional condition requires it.” See NRCP 53(b). No such showing has been made here, where hearing masters are being used routinely and without specific reference, thus calling into question the Court’s reliance on this rule to justify the assignment of hearing masters as special masters to hear termination matters.

The District Attorney cites the necessity to follow the one-family-one judge model as an exceptional condition justifying the appointment of hearing masters to preside over 432B cases, including termination motions, yet gives no explanation as to exactly why that is so exceptional, particularly when Rule 53 serves to supplement, not supplant, judicial determinations. In *Russell v. Thompson*, the Nevada Supreme Court found the use of a master to determine property division and spousal support issues in a divorce case to be improper. 96 Nev. 830, 619 P.2d 537 (1980). “Masters are appointed ‘to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause’ (citation omitted), and not to place the trial judge into a position of a reviewing court.” 96 Nev. at 834, 619 P.2d at 539. The *Russell* Court added “Irrespective of the trial court’s doubtless good faith, this type of [blanket] delegation approaches an unallowable abdication by a jurist of his constitutional responsibilities and duties.” *Id.* The fact that a judge reviewed and adopted the master’s findings was not enough to make the use of a master proper. *Id.*

Even the Dependency Court, itself, at one point seemed to have questions about the breath of authority it could convey using this Rule. Although Administrative Order 13-02 does rely upon NRCP 53 to give the hearing master authority to preside over some aspects of termination matters, it significantly limits that authority to uncontested matters. No legal basis is given in Administrative Order 15-12 for further expanding that authority. Questions clearly remain about the Court’s ability to confer authority upon the hearing masters as special masters in termination matters.

1. **The District Attorney Believes Recent Amendments to NRS 432B Resolve the Supreme Courts Concerns, But It is Not Clear That They Do.**

The District Attorney’s primary argument has been that the amendments to NRS 432B that went into effect January 1, 2018, distinguish this case from the situation in KJB, thus rendering the concerns in that case inapplicable. While it is accurate that the termination action in this case was initiated by the District Attorney filing a motion within the existing 432B case, in contrast to the termination action in KJB, which was filed as a separate action pursuant to NRS 128, it is not clear that distinction resolves the concerns raised by the Supreme Court.

Interestingly, at several points in the District Attorney’s arguments and pleadings, when talking about the statutory amendment, the District Attorney says things like “expressly permits” or “it is clear from the plain language” to describe the conveyance of authority to the hearing master. However, the District Attorney has cited to no actual statutory language that explicitly provides for such authority for the hearing master. That is likely because there is none. Instead the District Attorney would have the Court go down several different paths of connecting dots, reading between the lines, and reviewing legislative history, to find where this authority *is implied*.

First, when the District Attorney claims that “NRS 432B is replete with references to hearing masters,” it would seem it actual means the statute makes numerous reference to “Court” and they argue that hearing masters should be included in the definition of “Court.” The District Attorney relies upon the definition of “Court” in NRS 432B.050, which refers to the definition in NRS 62A.180, to say that the legislature clearly intended for hearing masters to be able to hear these cases. There are, however, concerns with that argument. That statute reads:

**NRS 62A.180 “Juvenile court” defined.**

(1) “Juvenile court” means each district judge who is assigned to serve as a judge of the juvenile court pursuant to NRS 62B.010 or court rule.

(2) The term includes a master who is performing an act on behalf of the juvenile court if:

(a) The juvenile court delegates authority to the master to perform the act in accordance with the Constitution of the State of Nevada; and

(b) The master performs the act within the limits of the authority delegated to the master.

The Supreme Court’s specific concern in KJB was the District Court’s lack of authority to allocate its duty pursuant to the Nevada Constitution, specifically, Article 6. See Matter of K.J.B., No. 71515, 409 P.3d 52 (Nev., Jan 18, 2018, *rehearing denied* June 22, 2018)(unpublished decision). Relying upon the definition of “court” to say that the conveyance of authority is constitutional when that definition itself depends on the conveyance being constitutional defies the rules of logic and, therefore, does not satisfactorily resolve this issue.

Secondly, the District Attorney argues that NRS 62B.020 and NRS 62B.030 allow the appointment of hearing masters in the juvenile court and because the filing of termination cases is now done within the juvenile court case, pursuant to NRS 432B.5901, the hearing masters can now hear the termination cases. However, such an argument ignores the point that regardless of the fact that the motion to terminate is now initiated pursuant to 432B, the termination itself is still based upon the law as set forth in NRS 128. NRS 432B.5901 specifically says the provisions of NRS 128 apply to all proceedings concerning termination of parental rights pursuant to this section. It is NRS 128 that sets out the grounds upon which a termination may be granted. So although NRS 432B authorizes the commencement of the action, the court that hears the case is still being asked to apply NRS 128. NRS 128 still governs the proceeding. Thus the Supreme Court’s specific concern in KJB is not eliminated, as they indicated, “The termination of parental rights is governed by NRS Chapter 128 and there is no statute within that chapter providing for the appointment of a referee or master.” See Matter of K.J.B., No. 71515, 409 P.3d 52 (Nev., Jan 18, 2018, *rehearing denied* June 22, 2018)(unpublished decision).

Lastly, the Court should note that while newly created NRS 432B.5906 sets out specifics about the final orders of the court and the right to appeal, it makes no mention of recommendations or the right to object to a hearing master’s findings. If the legislature so clearly intended for the termination proceedings to be heard by hearing masters, as the District Attorney argues, it would seem they might have mentioned the recommendation and order process and right to objection in this section. Absent clear and explicit statutory authority, which is not present here, the concerns discussed by the Supreme Court in KJB, remain, thus making proceeding on termination matters before hearing masters very risky.

1. **The District Attorney’s Arguments that the District Court Has Inherent Authority to Appoint a Hearing Master Are Unclear.**

The District Attorney appears to argue that by its very existence as a court, the Court has inherent powers to appropriately and efficiently run itself, which include the power to appoint hearing masters. The Court does have power to create procedures and rules. It even has authority to appoint hearing masters in certain instances. However, this argument does not explain how the Court has the power to appoint hearing master specifically to hear termination of parental rights cases when the Supreme Court has said it cannot delegate that authority absent a specific legislative directive. See Matter of K.J.B., No. 71515, 409 P.3d 52 (Nev., Jan 18, 2018, *rehearing denied* June 22, 2018)(unpublished decision).

/ / /

/ / /

/ / /

1. **Although the District Attorney Argues that Having the Termination Case Remain Before the Hearing Master is in Subject Minor’s Best Interest, Subject Minor Believes Not Setting His Case Up for a Lengthy Appeal That Would Delay His Permanency is Actually in His Best Interest**.

The District Attorney correctly points out that a one judge/one family model is the recommended best practice. However, if the Supreme Court will not uphold termination decisions by a hearing master, a model that is truly one *judge*/one family will need to be implemented in order to abide by the best practice standards and the Blue Ribbon Panel’s recommendations.

While having a judicial officer most familiar with his case would be in CLIENT’s best interest **if** the decisions by that judicial officer were legally sound, having his case heard by a judicial officer whose decisions are ripe for an appeal is not in his best interest. If CLIENT is forced to proceed with his termination case before a hearing master when uncertainty remains regarding the hearing master’s authority to hear that case, he is being set up for foreseeable and unnecessary delays in his permanency. That is certainly not in his best interest. Any detriment to CLIENT from having a newly-assigned district court judge have to get up to speed on the facts and history of his case is far outweighed by the detriment that would come to him if his permanency is delayed for years while the termination decision is potentially appealed.

Despite the District Attorney’s efforts to try to paint this issue in black and white and to persuade the Court that no real issues continue to exist, there are still very legitimate questions regarding the authority of hearing masters to hear termination of parental rights motions. As a result, CLIENT wishes to err on the side of caution, rather than risk delays in his permanency, and, therefore requests that the termination aspects of his case be heard by a judge rather than a hearing master.

1. **With the Substantive Issues of Concern by the Supreme Court of Nevada in *KJB* Undeniably Unresolved, the DA Resorts to Procedural Attacks on Both the Court’s Process and the Subject Minor’s Use of a Notice, But Such Arguments Also Fail.**

The District Attorney has gone to great lengths to distract the Court from the important issues at hand by attempting to have Subject Minor’s Notice of Request for Termination of Parental Rights Matter to Be Heard by a District Court Judge stricken and by challenging the Court’s procedure. The Court should not be diverted by these red herrings.

CLIENT addressed the District Attorney’s from its initial Motion to Strike in his Opposition to the same. However, the District Attorney attempts to present additional arguments in its improper Amended Motion to Strike. Pursuant to NRCP 15, in part:

1. **Amendments.** A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party’s pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires . . . .

Here, CLIENT had already filed a responsive pleading – namely his Opposition – to the District Attorney’s original Motion to Strike. Therefore, without leave of court or written consent of the adverse party, neither of which were obtained here, the District Attorney may not amend its Motion. Accordingly, the Court should strike the District’s Attorney’s Amended Motion to Strike and should not consider the arguments therein. However, in the event the Court shall treat the pleading as supplemental and consider the arguments, they will each be rebutted below.

1. **The District Attorney Overstates the Requirements of Existing Rules.**

The District Attorney, is insistent that the only way for a party to remove a hearing master appointed to a case is to submit a motion to the court requesting removal of the hearing master, which argues statutory or constitutional grounds as the basis of their request. However, the District Attorney cites no legal authority that actually supports that requirement. There is a suggestion that NRCP 53(a)(2), which governs removal of a special master that was specifically appointed pursuant to that rule, must be followed. However, as was discussed above, it is questionable whether the Hearing Master’s appointment in the instant case was actually properly made pursuant to Rule 53. Additionally, EDCR 5.500-.508, the local rules governing motions are cited. However, as was argued in CLIENT’S Opposition to the District Attorney’s Motion to Strike, there are other filings besides motions that are proper and commonly accepted by the Court. The District Attorney cites no legal authority that properly supports its broad statement and no precedent for why the manner it attempts to dictate as proper is the only appropriate means for CLIENT to make its request of the Court.

1. **The District Attorney Misstates Subject Minor’s Position.**

Several times throughout the Amended Motion, the District Attorney claims that CLIENT argues that the request to reassign the termination matter will be granted on demand upon filing of the Notice. CLIENT has never made such an argument and throughout this case has had no reason to expect that matter would be handled any differently than pursuant to the process that was set out in the Notice issued by the Court. Specifically, CLIENT expected the matter would be referred to the Presiding Judge for a Hearing to consider the reassignment of the termination, which it was. That being said, it should be noted that the Court’s Notice appears to say it is an automatic right, as it reads, “Failure to exercise the right to have a District Judge hear your Termination of Parental Rights action constitutes a waiver of any claim that the assigned Hearing Master lacks the ability to hear your Termination of Parental Rights action.”

The District Attorney also claims that CLIENT has argued that the Court’s Notice is a new rule of procedure, and incessantly refers to “the new local rule” throughout its recent pleadings. CLIENT has made no such argument. The contention was that the Court, presumably sharing some of the concerns that CLIENT has, set up a process by which parties can request to have their termination matters heard by a District Court Judge versus a hearing master, if that makes them more comfortable. No one said anything about a new rule or an amendment to a rule.

1. **The District Attorney Inaccurately Characterizes the Court’s Policy as Improperly Amending a Local Rule.**

Building on its incorrect portrayal of CLIENT’S arguments, the District Attorney goes on to tell the Court why it cannot amend rules without approval from the Supreme Court. Such arguments are unnecessary as there have been no improper attempts to amend rules here.

As the District Attorney so aptly points out in its Opposition, “the District Court has inherent authority to create procedure and rules reasonable and necessary to administer justice efficiently, fairly, and economically.” (See District Attorney’s Opposition, filed August 14, 2018, Page 12, Lines 6-8.) Certainly, adjusting court assignments and calendars to ensure the Court’s operations are not in direct conflict with a Supreme Court ruling is clearly within the Court’s authority. In fact, it is precisely what the Court did between January and April, reassigning trials to senior judges and physically moving judges to hearing masters’ courtrooms to hear uncontested termination matters. And it did it without motions, without hearings and opportunities to be heard, and most significantly, without objection or a flurry of motions being filed by the District Attorney, as it was clearly within the Court’s authority in responding to the Supreme Court’s ruling. The Court’s current process pursuant to the Notice is no different.

1. **The District Attorney Invents a List of Theoretical and Unlikely Problems Related to the Process the Court is Using.**

The District Attorney argues that if “the Advisement” is a new rule, it is an improper rule, as pursuant to NRS 2.120, rules shall not “abridge, enlarge, or modify any substantive right” and shall not be inconsistent with the State Constitution. The District Attorney then goes on to provide litany of ways this “new rule” improperly does all of those things.

Initially, as discussed above, the Court’s process is not a new rule, but simply a process the Court has put in place. Thus, the rest of the District Attorney’s arguments in this vain should be moot. However, the District Attorney’s potential problems with this process will be addressed individually here so they too can be put to bed.

First, there is no forum shopping going on pursuant to this new process. The Court first started reading the Notice in mid-April. Between then and the filing of CLIENT’S first Notice on July 12, 2018, it would appear no party has exercised the right afforded in the Notice. Clearly parties are not abusing this process. Shortly after the Supreme Court’s denial of the Petition for Rehearing in KJB, this and several other notices were filed by undersigned counsel. The Children’s Attorneys Project was clear with both the District Attorney’s Office and the Court itself, that such Notices would be filed in all of its cases with termination of parental rights motions pending before hearing masters. Therefore, there is no picking and choosing going on. Additionally, with the Court’s process being that the request for reassignment gets referred to the Presiding Judge, with the Presiding Judge deciding if it should be reassigned and, if so, to which Judge, parties would have little control of where their case would eventually end up, so it is unclear how they could even use this process to effectively forum shop.

Secondly, the District Attorney’s arguments about one judge/one family are quite ironic. In its arguments about how this new process inappropriately abridges, enlarges or modifies rights, the District Attorney argues that assigning a new judicial officer abridges the family’s rights to have a judicial officer familiar with their case. The District Attorney, itself, has apparently enlarged the family’s rights to now include a right to one judge/one family. Although maintaining one judicial officer throughout the case is a recommendation and a best practice for courts, it is certainly not a right bestowed upon families. And as discussed above, the benefits of maintaining such an assignment are outweighed by the detriment potential delays in permanency present.

Third, the District Attorney’s arguments about parties having to guess what the legal basis for the request for reassignment of the termination motion is, as well as that the pleading should be void due to vagueness are disingenuous and the statements about hearings being set inconsistently are inaccurate. CLIENT questions the Hearing Master’s authority to hear termination of parental rights actions in light of the concerns expressed by the Supreme Court of Nevada in KJB, as was precisely stated in CLIENT’S Notice. That and nothing more is CLIENT’S basis. There is no mystery and no vagueness. Further, the District Attorney states, “hearings on the ‘Notices’ are not being set consistently.” There was no inconsistency. Prior to the first of these hearings coming before the Presiding Judge on August 1, 2018, they simply were not being set at all. Once that hearing brought that issue to the Court’s attention, hearings on other notices have since been set.

Fourth, nothing in the Court’s process is creating challenges on appeal. As stated above, CLIENT’S Notice does state the basis for the request for reassignment. There will be a video recording of the hearing before the Presiding Judge. Parties choosing to appeal a termination of parental rights decision made on a case where the Presiding Judge reassigned it from a hearing master to a district court judge will have no different issues on appeal. If anything, there will be less of a record for the Supreme Court to need to sift through, as the objection process will be eliminated, maximizing efficiency.

Fifth, the District Attorney’s argument that having hearings before a presiding judge on every case where a request is made (which is every case where the Children’s Attorneys Project represents the Subject Minor) will cause an increase in needed court resources is actually correct. However, a policy to simply move all termination motions before district court judges until further clarity is received from the Supreme Court on this issue would very quickly rectify that problem. Additionally, the strain on the judicial resources will be infinitely more significant in the long term if the Supreme Court were to remand all termination of parental rights trials that were heard by hearing masters and challenged. Subject Minors like CLIENT gladly choose a delay of a few weeks to get before the Presiding Judge to have their case moved to a district court judge over the possibility of a several-year delay to get through an appeal and possible remand.

Sixth, the concerns about service and interference with a party’s ability to participate in the proceedings are unrealistic. The District Attorney’s arguments about parents being at risk of having their rights terminated by a summary proceeding if they are not present are nonsensical. If a natural parent is summonsed and fails to appear at the initial hearing on the motion to terminate parental rights, the District Attorney would ask to proceed with a prove-up, which is in and of itself a summary process by which the parent’s rights are terminated without their participation and which happens all the time. Additionally, the District Attorney routinely asks the Court to carry the summons over to the next court date, for example when a parent shows at the first hearing and has counsel appointed and there is a worry he or she will not return for the confirmation of counsel hearing the following week. There is no reason the same thing cannot happen in this instance.

None of the theoretical problems the District Attorney describes compare to the very real practical problems that are possible and foreseeable if the termination matters continue to be heard by hearing masters absent further clarification from the Supreme Court of Nevada.

1. **The District Attorney Provides No Basis Upon Which** CLIENT**’S Notice Should Be Stricken.**

As was argued in CLIENT’S Opposition to the District Attorney’s Motion to Strike, the District Attorney fails to articulate a legal basis upon which CLIENT’S Notice, which was filed pursuant to the Court’s instructions, can be stricken. First, the District Attorney attempts to argue that CLIENT’S Notice is really a motion in disguise. However, the District Attorney fails to address CLIENT’S arguments in the Opposition regarding the distinction in the rules between a “motion” and a “notice” or “other papers.”

The District Attorney argues that the Court has inherent authority to strike things from the record. There is no disagreement on that point. If fact, there is also express authority pursuant to NRCP Rule 12. However, what the District Attorney fails to address is the grounds upon which something can be stricken. The examples the District Attorney cites to are all regarding situations where the court is having to sanction parties and address problematic litigation conduct. Such is not the case here. The District Attorney has made no showing here that KHAMARI’S filing was “redundant, immaterial, impertinent, or scandalous,” as Rule 12 requires, because it cannot, particularly, where CLIENT was precisely following the directive given to him by the Court.

Even the District Attorney, citing *Thompson v. Hous. Auth. Of Los* Angeles, 782 F.2d 829, 830 (9th Cir. 1986) (per curiam), notes: “Because of their very potency, inherent powers must be exercised with restraint and discretion. A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process.” Here, there is no reason to sanction CLIENT by striking his Notice, when he clearly was not abusing the judicial process, but rather following it to a tee.

1. **With Issues Clearly Still Unresolved, the Only Way to Avoid Delays and Ensure Stability and Permanency for Children is to Conduct All Termination of Parental Rights Proceedings before District Court Judges Until Further Clarity is Received from the Supreme Court and the District Attorney Has Failed to Argue How Such a Practice Would Harm or Prejudice its Client.**

Given that CLIENT properly followed the Court’s process as laid out in the Notice and appropriately requested that the termination of parental rights issues in his case to be transferred to a district court judge, as was his right, the Presiding Judge must consider that issue. Because, as was explained above, the issue of whether or not a hearing master has authority to hear termination actions is not clearly resolved as the District Attorney would have the Court believe, but instead very much an unsettled issue, ripe for various interpretations. Therefore, if these termination matters continue to be granted by hearing masters amidst this uncertain, it is very likely some, if not many, will end up being challenged with appeals. As a result, delays in permanency for CLIENT and many other children are a very real and potentially incredibly detrimental risk.

Since this risk exists, it would seem the most prudent and efficient course would be to err on the side of caution and allow CLIENT and any other party who requests it, to have their matters heard by a district court judge. The risks and potential harms to CLIENT are very obvious and sadly demonstrated by the little girl in KJB who still sits awaiting adoption, more than two years after the conclusion of her termination of parental rights trial before a hearing master. However, the District Attorney, on the other hand, has not articulated one single potential harm, risk, or negative consequence to its client, the Department of Family Services, if the Court takes a better-safe-than-sorry approach and assigns all termination of parental rights motions to district court judges until such time as further guidance on the issue of hearing master authority relative to terminations is received from the Supreme Court. Maybe that is because there is none.

1. **CONCLUSION**

The Supreme Court of Nevada’s decision in KJB, has raised some very real concerns about a hearing master’s authority to hear terminations of parental rights actions. Although the District Attorney would have the Court believe the recent amendments to NRS 432B adequately address all of the concerns raised by the Supreme Court on this issue, that is certainly not the case. Given this is an unsettled issue of law, CLIENT, following the instructions and process set out by the Court, has requested that his parents’ termination of parental rights trial be set before a district court judge rather than the regularly-assigned Hearing Master. He urges this Court to err on the side of caution and not put his permanency in jeopardy. For all of the foregoing reasons, CLIENT respectfully requests that the termination of parental rights portion of his case be immediately reassigned to a district court judge and promptly set for trial.

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 served the foregoing ***SUBJECT MINOR’S*** ***REPLY TO: DISTRICT ATTORNEY’S “OPPOSITION TO SUBJECT MINOR’S ‘NOTICE OF REQUEST FOR TERMINATION OF PARENTAL RIGHTS MOTION TO BE HEARD BEFORE A DISTRICT COURT JUDGE’ ” AND OPPOSITION TO: DISTRICT ATTORNEY’S “AMENDED MOTION TO STRIKE CHILDREN’S ATTORNEYS PROJECT ‘NOTICE OF REQUEST FOR TERMINATION OF PARENTAL RIGHTS MOTION TO BE HEARD BEFORE A DISTRICT COURT JUDGE’ ”*** 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

Exhibit 1

Exhibit 2

Exhibit 3