**OPP**

**ATTORNEY INFORMATION**

Nevada Bar No.: #

**FIRM/LEGAL AID/OTHER**

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

EMAIL

Attorney(s) for Plaintiff/Defendant

*In Conjunction with Legal Aid Center of Southern Nevada Pro Bono Project*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

PLAINTIFF NAME, )

Plaintiff, ) Case No.:

)

vs. ) Dept. No:

)

DEFENDANT NAME, )

) Date of Hearing:

) Time of Hearing:

Defendant. )

)

**OPPOSITION TO MOTION FOR TEMPORARY CUSTODY, VISITATION, CHILD SUPPORT, SPOUSAL SUPPORT, AND/OR EXCLUSIVE POSSESSION AND COUNTERMOTION**

[*Only include applicable motions*]

COMES NOW, Plaintiff/Defendant, (*client* *name*) ­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and through counsel, (*attorney name*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq. of (*law firm*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and hereby submits this Opposition to (*Plaintiff’s/Defendant’s*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Motion for Temporary Custody, Visitation, Child Support, Spousal Support, and/or Exclusive Possession and Countermotion. This Opposition is made in good faith, is supported by law and fact, and is brought before the Court based upon the pleadings on file herein, Points and Authorities, and the Affidavit of (*client name*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ attached hereto, and any oral arguments allowed at the time of the hearing.

WHEREFORE, (*Plaintiff/Defendant*) \_\_\_\_\_\_\_\_\_\_\_ moves this Court for the following:

1. That the Motion be denied in its entirety.
2. *Relief Requested* *pursuant to child custody and visitation;*
3. *Relief requested pursuant to child support:*
4. *Relief Requested pursuant to spousal support;*
5. *Relief requested related to exclusive possession;*
6. *Relief requested related to relocation; and*
7. For such other and further relief as this Court deems just and equitable.

DATED this \_\_\_\_ day of (*month*) ­­­\_\_\_\_\_\_\_\_\_\_\_, 20­­­\_\_\_\_.

Respectfully Submitted By:

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

**ATTORNEY INFORMATION**

Nevada Bar No.: #

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

EMAIL

Attorney(s) for Plaintiff/Defendant

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**PROCEDURAL HISTORY**

*Here, please write a brief procedural history of the case. Include any motions, complaints, answers, counterclaims, amendments, injunctions, case management conferences, and any other pleadings. Include the date of each filing/hearing*.

**II.**

**STATEMENT OF FACTS**

*Here, please write a statement of all relevant facts of the case. Make sure to include the children’s names, birthdates, and any relevant facts pursuant to childcare and caretaking of the children. Include any relevant history between the parties including any issues regarding paternity, residency, and/or domestic violence.*

**III.**

**LEGAL AUTHORITY AND ARGUMENT**

1. ***Temporary Custody and Visitation. (Adverse Party) \_\_\_\_\_\_\_\_\_\_\_\_\_\_ should not be awarded temporary custody of the minor child(ren). \_\_\_\_\_\_\_\_\_\_\_\_ (plaintiff/defendant name) is a fit and proper person to be awarded \_\_\_\_\_\_\_\_\_\_\_ legal custody and \_\_\_\_\_\_\_\_\_\_ physical custody of the minor child(ren).***

*Here, write a brief explanation for awarding the desired legal and physical custody*

*requested above and explain why your client opposes the opposing party’s request for temporary physical custody.*

Pursuant to NRS 125C.0025, there is a presumption that joint physical custody is in the best interest of the child if: (1) the parents have so agreed; or (2) a parent has demonstrated, or has attempted to demonstrate but had his or her efforts frustrated by the other parent, an intent to establish a meaningful relationship with the child. Pursuant to NRS 125C.003, a court may award primary physical custody of the child if the court determines that joint physical custody is not in the best interest of the child.

In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. NRS 125C.0035(1). In determining the best interest of the child, NRS 125C.0035(4) states that the court shall consider and set forth its specific findings concerning, among other things:

1. The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody;
2. Any nomination of a guardian for the child by a parent;
3. Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent;
4. The level of conflict between the parents;
5. The ability of the parents to cooperate to meet the needs of the child;
6. The mental and physical health of the parents;
7. The physical, developmental and emotional needs of the child;
8. The nature of the relationship of the child with each parent;
9. The ability of the child to maintain a relationship with any sibling;
10. Any history of parental abuse or neglect of the child or a sibling of the child;
11. Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child; and
12. Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.”

**[OR]**

[*If the client is a DV victim and is requesting primary or sole custody*]

Except as otherwise provided in subsection 6 of NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth

1. Findings of fact that support the determination that one or more acts of domestic violence occurred; and
2. Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

In addition, NRS 125.510 provides in pertinent part:

1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 or NRS:
2. During the pendency of the action, at the final hearing or at any time thereafter during the minority or any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and
3. At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.

This Court should not award (*adverse party*) \_\_\_\_\_\_\_\_\_ temporary custody of the minor child(ren). (*Plaintiff/Defendant name*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ should be awarded (*sole/primary/joint*) \_\_\_\_\_\_\_\_\_ physical custody of the minor child(ren) for several reasons. *For the next section, articulate the reasons why the desired custody provisions should be awarded and/or why the requested temporary custody of the other party should not be awarded. Explain why your client disagrees with the other party’s request for temporary custody. Reference the factors listed above and include relevant facts to support the assertions.*

First,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Second,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Third,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Fourth,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fifth,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Sixth,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

[*Add more if necessary*]

For the above-mentioned reasons, it is not in the best interest of the child(ren) that (*plaintiff/defendant name*) \_\_\_\_\_\_\_\_\_\_ have temporary custody of the parties’ minor child(ren). (*Plaintiff/Defendant name*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ respectfully requests that he/she be awarded (*sole/primary/joint*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ physical custody of their minor child(ren).

[*Here, include any proposed visitation schedule*]

1. ***(Party who should pay child support) \_\_\_\_\_\_\_\_\_\_\_\_\_ should be ordered to pay temporary child support pursuant to NAC 425.140.***

Both parents have a responsibility to provide for the necessities of their children. (*Party requesting*) \_\_\_\_\_\_\_\_\_\_\_\_ has been the sole provider for the minor child.

(*Adverse Party*)\_\_\_\_\_\_\_\_\_\_\_ should have to contribute to the minor child’s necessities and care. (*Party Requesting*) \_\_\_\_\_\_\_\_\_\_\_\_ respectfully requests that he/she be awarded child support in the amount of (*percentage*) \_\_\_\_\_\_\_\_\_\_\_ of (*Adverse Party’s*) $\_\_\_\_\_\_\_\_\_\_\_\_\_ gross monthly income.

[*Child support can be calculated here*: <https://nvchildsupportguidelinescalculator.azurewebsites.net/getobligation.aspx>]

The Court shall determine child support under NAC 425.140. A Financial Disclosure form will be filed with this motion **OR** has already been filed within the last 6 months and there are no material changes to report.

*Here, state whether your client agrees or disagrees with the other party’s request for child support. If your client does not agree to the other party’s request for child support, state why.* *Make sure to include the proposed custody arrangement and the amount your client thinks should be paid per month. If your client is unsure about how must child support should be paid, request that the judge set the amount of child support based on your client’s income and the custody arrangement. Make sure to include any childcare costs incurred by your client or medical coverage provided by your client, if applicable.*

1. **(*Adverse Party) \_\_\_\_\_\_\_\_\_\_\_ should not be awarded temporary spousal support. OR (Client) \_\_\_\_\_\_\_\_ should be awarded temporary spousal support of $\_\_\_\_\_\_\_\_ per month.***

Pursuant to NRS 125.040, the court may, in its discretion, order one spouse to pay temporary spousal support to the other spouse in any suit for divorce to assist the other party in accomplishing one of more of the following:

1. To provide temporary maintenance for the other party;
2. To provide temporary support for children of the parties; or
3. To enable the other party to carry on or defend such suit.

To make such a determination, the court considers the following factors: the gross monthly income of both parties, the age of both parties, the amount of years the parties were married, and the history, education, and employment goals of the requesting party. The court may also make orders affecting the property of the parties, including awarding one spouse temporary exclusive possession of the community residence NRS 125.040.

*Here, describe the current financial state of both parties and explain why the requesting party should* ***not*** *be granted temporary spousal support. Explain why your client disagrees with the other party’s request for temporary spousal support or explain why your client is opposed to paying the amount of spousal support requested.*

**AND/OR** IF your client is requesting spousal support…

*State the requested amount of temporary spousal support per month. Make sure to include your client’s gross monthly income, the adverse party’s gross monthly income, your client’s age, the adverse party’s age, and the number of years the parties were married. Also describe your client’s work history, level of education, and any additional training/education your client believes is necessary to obtain his/her employment goals. Explain why your client should be granted temporary spousal support and be as specific as possible. Also include why your client believes the adverse party is able to pay the requested support.* A Financial Disclosure form will be filed with this motion **OR** has already been filed within the last 6 months and there are no material changes to report.

1. ***This Court should not grant (Adverse Party’s) \_\_\_\_\_\_\_\_\_\_\_\_ request for Exclusive Possession of the Marital Residence located at (address) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.***

*Here, indicate whether your client agrees or disagrees with the other party’s request for exclusive possession of the marital residence. If not, explain why your client does not agree with the other party’s request for exclusive possession. Include an explanation of the hardship that would be imposed if the court grants the adverse party’s request for exclusive possession.*

AND/OR IF your client is requesting exclusive possession of the marital residence…

***This Court should grant (client name) \_\_\_\_\_\_\_\_\_\_\_\_\_ Exclusive Possession of the Marital Residence located at (address) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.***

*Here, describe the current living situation of the parties. Include the gross monthly income of both parties and describe any domestic violence issues. Include an explanation of why your client feels it is easier for the adverse party to find alternative housing and describe any issues that might affect the requesting parties’ exclusive possession of the marital residence.* A Financial Disclosure form will be filed with this motion **OR** has already been filed within the last 6 months and there are no material changes to report.

1. ***(Requesting Party) \_\_\_\_\_\_\_\_\_\_\_\_ should/should not be permitted to relocate with the child to \_\_\_\_\_\_\_\_\_\_\_\_\_\_.*** *[If applicable]*

Pursuant to NRS 125C.006, a parent must obtain court permission or the other parent’s written consent before relocating with a child outside of Nevada or to a place within Nevada that would substantially impair the other parent’s ability to maintain a meaningful relationship with the child.

*[Here, briefly describe the current situation about why the party is requesting to relocate and whether or not the non-custodial parent will/will not consent to the move; and why. Include a request for permission from the court to relocate, if applicable]*

Pursuant to NRS 125C.001(1), the relocating parent must prove to the court that the parent has a sensible, good-faith reason for the move that is not intended to deprive the other parent of his or her parenting time. The relocating parent must also prove that the move would be in the best interest of the child and that the child and that the child and parent would both benefit from an actual advantage if allowed to move.

*[Here, describe the current situation and explain why the party is requesting to relocate or arguments against if your client opposes a move by the other party. Include specifics about what the requesting party is hoping to achieve by moving (i.e. opportunities, career paths, and other financial incentives). Include how the child would (or would not) benefit from the move and whether the requesting party has family in the city/state.]*

Pursuant to NRS 125C.007(2), in considering the parent’s request to relocate, the Court must weigh various factors, including: (1) the motives of the relocating parent; (2) the motives of the non-requesting parent; (3) the extent to which the relocation would improve the quality of life for the child and parent; (4) whether the relocating parent will comply with the substitute visitation order; (5) whether there is a realistic alternative visitation schedule that will adequately foster and preserve the relationship between the child and the non-relocating parent; and (6) any other factor.

*[Here, go through the above-mentioned factors using relevant facts for/against the move]*

(*Requesting Party*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ believes that in light of the law and facts of this case, he/she should be granted leave to relocate.

**III.**

**CONCLUSION**

(*Client*) ­­­­­\_\_\_\_\_\_\_\_\_\_\_\_ believes that he/she has reasonably set forth herein valid reasons as to why (*Adverse Party’s*) \_\_\_\_\_\_\_\_\_\_\_\_ Motion should be denied.

WHEREFORE, the Plaintiff/Defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, respectfully requests that this Court issue an Order as follows:

1. That the Motion be denied in its entirety.
2. *Relief Requested* *pursuant to child custody and visitation;*
3. *Relief requested pursuant to child support:*
4. *Relief Requested pursuant to spousal support;*
5. *Relief requested related to exclusive possession;*
6. *Relief requested related to relocation; and*
7. For such other and further relief as this Court deems just and equitable.

DATED this \_\_\_\_ day of (month) \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

Respectfully Submitted By:

**ATTORNEY INFORMATION**

Nevada Bar No.: #

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

EMAIL

Attorney(s) for Plaintiff/Defendant

**AFFIDAVIT OF (CLIENT NAME) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

STATE OF NEVADA )

ss:

COUNTY OF CLARK )

(CLIENT NAME), ­­­­­\_\_\_\_\_\_\_\_\_\_\_ being first duly sworn, upon oath, deposes and says:

[INSERT FACTS FROM THE CLIENT’S AFFADAVIT]

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

CLIENT NAME/SIGNATURE

**SUBSCRIBED AND SWORN** to before me

this \_\_\_\_ day of (month) \_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_ by (Client name) ­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

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

NOTARY PUBLIC

**CERTIFICATE OF MAILING**

**I DO HEREBY CERTIFY** that I am an Employee of (*law firm, legal aid, other*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_, I placed a true and correct copy of the foregoing MOTION FOR TEMPORARY CUSTODY, VISITATION, CHILD SUPPORT, SPOUSAL SUPPORT, AND RELOCATION, in the United States Mail, in Las Vegas, Nevada, with first class postage pre-paid thereon, and addressed to the following:

ADVERSE PARTY NAME

ADDRESS

CITY, STATE, ZIP CODE

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

An Employee of (*law firm, legal aid, other*)