**PMOT**

ATTORNEY CONTACT INFO

Attorney for XXX

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

**CLIENT 1,** ) HEARING REQUESTED

DOB: Date of Birth )

)

**CLIENT 2,** )

DOB: Date of Birth )

)

**CLIENT 3,** )

DOB: Date of Birth )

)

**CLIENT 4,** )

DOB: Date of Birth )

)

**CLIENT 5,** )

DOB: Date of Birth )

)

MINORS. )

)

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.**

**MOTION FOR A FINDING OF LACK OF REASONABLE EFFORTS FOR FAILURE TO PLACE SIBLINGS TOGETHER**

COMES NOW the minor children, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5 by and through their attorney, Attorney, Esq., of Firm, and hereby files this Motion for a Finding of Lack of Reasonable Efforts for Failure to Place Siblings Together.

This Motion is based upon the following Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument allowed at the time of the hearing of this matter.

DATED this Day day of Month, Year.

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

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In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

**MEMORANDUM OF POINT AND AUTHORITIES**

1. **STATEMENT OF FACTS**

CLIENT 1, CLIENT 2, and CLIENT 3 were taken into police custody on or about Date. They were removed and placed into the Clark County Department of Family Services’ (“DFS”) custody due to charges of inadequate shelter and inadequate supervision. Their mother, Mother, and her boyfriend were homeless, had no income, lived and kept the children in a camper truck with no electricity or running water, used marijuana and methamphetamine, and left drug paraphernalia within reach of the children. On Date, CLIENT 1, CLIENT 2, and CLIENT 3 were placed together in a DFS foster home.

On Date, Mother gave birth to CLIENT 4. CLIENT 4 was born drug exposed. As a result, CLIENT 4 was removed from Mother on Date and placed in the care of DFS. CLIENT 4 was placed in a DFS foster home separate from CLIENT 1, CLIENT 2, and CLIENT 3.

On Date, Mother gave birth to CLIENT 5. CLIENT 5 was also born drug exposed. As a result of Mother’s substance abuse, CLIENT 5 was removed from her care on Date, and placed in DFS custody. Subsequently, DFS placed CLIENT 5 in the same foster home as his brother CLIENT 4. Even though they are separated, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5 all visit with each other every Saturday in order to maintain a bond as siblings.

On Date, the Eighth Judicial District Court ordered that a permanency plan of reunification with Mother be pursued concurrently with recruitment of an adoptive placement for CLIENT 1, CLIENT 2, CLIENT 3and CLIENT 4. Subsequently, on Date, the Eighth Judicial District Court ordered that a permanency plan of reunification with Mother be pursued concurrently with recruitment of an adoptive placement for CLIENT 5.

1. **LEGAL ARGUMENT**
2. **This Court has original and exclusive jurisdiction over this matter.**

The Court has original jurisdiction over this matter pursuant to N.R.S. 3.223:

**NRS 3.223 Jurisdiction of family courts.**

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, [25 U.S.C. §§ 1901 et seq.,](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=25USCAS1901&originatingDoc=NC258281054C411E7B517FE18F210CDFA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding:

(a) Brought pursuant to title 5 of NRS or chapter 31A, 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159A, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support.

N.R.S. 432B.410(1) further provides that: “Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child domiciled, living or found within the county who is a child in need of protection or may be a child in need of protection.” Having taken the minors into protective custody pursuant to a Petition – Abuse/Neglect filed by the Clark County Department of Family Services under N.R.S. 432B.470, this Court acquired subject matter jurisdiction over this case and personal jurisdiction over CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5.

1. **The Nevada Legislature intended to create a “presumption” rather than a mere preference, and therefore the siblings must be placed together unless that presumption has been rebutted.**

In accordance with the mandatory presumption set forth in N.R.S. 432B.550, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4and CLIENT 5 should be placed together. N.R.S. 432B.550(6)(a) specifically mandates:

6. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of the parents of the child or guardian:

(a) It must be presumed to be in the best interests of the child to be placed together with the siblings of the child.

Black’s Law Dictionary defines a “presumption” as:

A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption.[[1]](#footnote-1)

Thus, in accordance with the Black’s Law Dictionary definition, the inference drawn in N.R.S. 432B.550(6)(a) requires that when a child in need of protection has siblings, the court must automatically infer that it is in the child’s best interest to be placed with his siblings. Further, Black’s Law Dictionary instructs that such an inference may only be defeated when the “adversely affected party overcomes it with other evidence.”[[2]](#footnote-2) Therefore, an opposing party must present contrary evidence to demonstrate that it is not in a child’s best interest to remain with his siblings.

Accordingly, the Nevada Supreme Court simplified the meaning of a presumption in *Clark County District Attorney, Juvenile Division v. Eighth Judicial District Court ex rel. County of Clark* by distinguishing a preference from a presumption.[[3]](#footnote-3) The Court emphasized, when statutory language contains a presumption, presumptive placement can only be denied if the adverse party shows actual detriment to the child from that placement.[[4]](#footnote-4) The Court then described a statutory “preference,” the much weaker standard, by noticing that when “statutory language only creates a preference . . . the district court must consider the child’s best interest.”[[5]](#footnote-5)

To determine the meaning of an ambiguous provision, the Nevada Supreme Court directs this Court to identify the underlying intent of the Legislature in creating the provision.[[6]](#footnote-6) Although the plain meaning of “presumption” is unambiguous, this Court may look at the Nevada Legislative history to ensure that the meaning is not contrary to the legislative intent.[[7]](#footnote-7)

In 2005, the Nevada Legislature amended NRS 432B.550 to establish the presumption and eliminated a lower standard which merely instructed that the siblings be placed together whenever “practicable.” As Assemblywoman Barbara Buckley explained, children are often separated because one child is more desirable than the other.[[8]](#footnote-8) The Nevada Legislature passed this amendment to avoid such situations where a foster parent is choosing the child with the least issues and separating him from his siblings.[[9]](#footnote-9) Legislative Advocate, Michael Alastuey, noted in these Assembly Hearings that this amendment supersedes prior law which simply dictated that siblings be placed together whenever practicable.[[10]](#footnote-10) Moreover, Alastuey explained that this amendment “clearly contemplates that there could well be circumstances where [it] is, in fact, not practicable” to place siblings together, but in the children’s best interests.[[11]](#footnote-11) Finally, Lucille Lusk, Chairman of Nevada Concerned Citizens, explained that although a presumption may not unequivocally mandate a court to place siblings together, it does require that “it be done when it can be done.”[[12]](#footnote-12) As such, by following the prior “whenever practicable” standard, this Court would be erroneously ignoring the plain meaning of the statute and the Legislature’s specific intent to strengthen the assertion that a sibling relationship should remain intact whenever *possible*.

Here, DFS has presented no evidence to show that the siblings will suffer any injury by being placed together. The presumption set out in N.R.S. 432B.550(6)(a) requires the adverse party to present evidence which shows actual harm to the siblings if they are placed together. As the Nevada Supreme Court emphasized, the question is not whether the foster home is the “better home,” but rather, whether placing the siblings together would be detrimental to their interests.[[13]](#footnote-13)

Moreover, DFS has created the exact scenario that the legislature contemplated. As Assemblywoman Buckley clarified, the concern in keeping the former “whenever practicable” language of N.R.S. 432B.550 was that infants and more desirable children would get selected for adoption and the older or less desirable children would be rejected. In this case, DFS has placed CLIENT 4 and CLIENT 5, the two youngest siblings who have been in the foster system since birth, into an adoptive resource. The remaining three siblings have been left in a foster home that is not an adoptive resource. Keeping the siblings apart raises the concern that DFS plans to use the lack of sibling bond as justification for allowing the two youngest to be adopted separately. This is the exact situation the Legislature feared and amended N.R.S. 432B.550 to prevent.

In this case, DFS has already disregarded the presumption that the siblings stay together when they placed the siblings in separate foster homes. Now DFS is attempting to move forward with the adoption of CLIENT 4 and CLIENT 5 in their current foster home, a home that refuses to also accept CLIENT 1, CLIENT 2, and CLIENT 3. This adoption is improper as it would continue to violate the presumption and permanently separate the siblings. DFS has not yet recruited an adoptive resource that can comply with the statutory presumption and take all five of the siblings.

The sibling relationship is one of the most important relationships that a child will develop in life. The siblings have an interest in being placed together and have developed a strong sibling bond. DFS has provided no objective evidence that refusing to finalize an adoption for two siblings instead of searching for a resource for all five siblings would be harmful. Although counsel understands that it may be difficult to find a placement for five siblings, it is still imperative that reasonable efforts be made to ensure that siblings remain together. The fact that it may be difficult or inconvenient for DFS to find an appropriate placement is not enough to overcome the siblings’ right to preserve the love and mutual support system maintained through their relationship with each other.

Counsel respectfully submits that no evidence on the record overcomes the presumption that siblings must be placed together. Therefore, the best interest presumption cannot be overcome and the siblings must be placed together.

1. **It is in the siblings’ best interest to be placed together.**

The Nevada Legislature and the Nevada Supreme Court have long recognized that the overarching consideration in the placement and custody of children is that the children’s best interests be achieved.[[14]](#footnote-14) As such, the Nevada Supreme Court noted that “preservation of the familial relationship is an important consideration in determining what is in the child’s best interest for placement purposes.”[[15]](#footnote-15) It is Nevada’s express public policy, codified in N.R.S. 432B.550(6)(a), to presume that co-placement with siblings is in the best interest of the child. There is an affirmative duty on State and County child welfare agencies to keep sibling groups intact.

Aside from the parent-child relationship, the sibling relationship is said to be the most important relationship in a child’s development. Siblings play an important role in socializing with one another and thus positively contribute to each other’s emotional and social development. Sibling connections in the foster care system are even more significant because they represent stability that is no longer available from the removed children’s parents.[[16]](#footnote-16)

Courts have noted the importance of maintaining a sibling bond. The court in *L. v. G.*, noting that sibling relationships provide a context for social development, stated “[a] sibling relationship can be an independent emotionally supportive factor for children in ways quite distinctive from other relationships, and there are benefits and experiences that a child reaps from a relationship from his or her brother(s) or sister(s) which truly cannot be derived from any other. Those of us who have been fortunate enough to experience a sibling relationship are aware of these basic human truths.”[[17]](#footnote-17) In *Obey v. Degling*, the court noted that “[y]oung brothers and sisters need each other’s strengths and association in their everyday and often common experiences, and to separate them, unnecessarily, is likely traumatic and harmful. The importance of rearing brothers and sisters together and thereby nourishing their familial bonds is also strengthened by the likelihood that the parents will pass away before their children.”[[18]](#footnote-18) When these children become adults, they will have only each other to depend on.

In this case, the siblings are deeply bonded. They have weekly visitation with each other and frequently go on outings together. Even the younger siblings recognize that they are siblings and the significance that holds. The siblings, especially CLIENT 1, express a desire to be placed and adopted together. The Nevada Legislature has recognized the detrimental effects that separating siblings can have on a minor’s well-being. Therefore, in accordance with N.R.S. § 432B.550, counsel respectfully submits that it is of vital importance to the best interests of the siblings to mandate that they be adopted together in the same home.

1. **The Foster Youth Bill of Rights requires siblings to be placed together whenever possible.**

In 2011, the Nevada Legislature enacted Assembly Bill 154 (“AB 154”), a comprehensive Bill of Rights for foster youth that took effect in October 2011. Incorporated in N.R.S. 432.500 et seq., AB 154 is the law of the State of Nevada.

N.R.S. 432.500 et seq. guarantees foster children an important right pertinent to this motion: the right to be placed with their siblings whenever possible. N.R.S. 432.530 provides in pertinent part:

With respect to the placement of a child in a foster home by an agency which provides child welfare services, the child has the right:

1. To live in a safe, healthy, stable and comfortable environment, including, without limitation, the right:

. . .

(d) To be placed with his or her siblings, whenever possible, and as required by law, if his or her siblings are also placed outside the home.

Here, DFS received an order on Date, requiring that they recruit an adoptive resource for CLIENT 1, CLIENT 2, CLIENT 3 and CLIENT 4. Nearly a year later, DFS has not found an adoptive resource that can accommodate even all four of these children, much less CLIENT 5, who was included in the subsequent order in Date. Counsel respectfully submits that by doing so, DFS has violated the siblings’ rights under Section 4 of AB 154 and therefore acted unreasonably.

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1. **Where the Department of Family Services fails to make reasonable efforts to place siblings together, the Court has the authority to make a finding of lack of reasonable efforts.**

When children are taken from their parents and placed into protective custody, Nevada presumes that keeping them together is in their best interest. DFS has a duty to make reasonable efforts to place siblings together. N.R.S. 432B.393 addresses the Court’s authority to make a determination of whether reasonable efforts were made and provides in pertinent part:

5. In determining whether reasonable efforts have been made pursuant to subsection 4, the court shall:

(a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;

(b) Consider any input from the child;

(c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;

(d) Consider the diligence and care that the agency is legally authorized and able to exercise, including, without limitation, the efforts to create an in-home safety plan;

(e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;

(f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue;

(g) Consider whether any of the efforts made were contrary to the health and safety of the child;

(h) Consider the efforts made, if any, to prevent the need to remove the child from the home and to finalize the plan for the permanent placement of the child;

(i) Consider whether the provisions of subsection 6 are applicable; and

(j) Consider any other matters the court deems relevant.

As addressed in this Memorandum of Points and Authorities, DFS has fallen short in their efforts to help these children maintain their sibling relationship. This Court should find it unreasonable that DFS has not placed the siblings together so, as they develop, they can continue to bond with each other. DFS has failed to help these children maintain their sibling support system, which is itself contrary to “reasonable efforts.”

1. **CONCLUSION**

In recognizing the importance of the sibling bond, the Legislature amended N.R.S. 432B.550(6)(a) to create a presumption that it is in the child’s best interest to remain with his siblings. DFS has presented no evidence to overcome this presumption and show that it is detrimental for the siblings to be placed together. As such, in achieving this Legislative goal, this Court must place siblings together.

DFS has failed to find an adoptive resource for the siblings for a year, and have trammeled on the rights of the siblings by doing so. Accordingly, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5, respectfully request that this Court find that the Department of Family Services has failed to make reasonable efforts to place the siblings together.

Respectfully submitted this Day day of Month, Year.

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

ATTORNEY CONTACT INFO

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

**AFFIDAVIT OF COUNSEL**

***CERTIFICATE OF SERVICE***

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **MOTION FOR A FINDING OF LACK OF REASONABLE EFFORTS FOR FAILURE TO PLACE SIBLINGS TOGETHER** 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:

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

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1. Black's Law Dictionary (10th ed. 2014), presumption. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. *Clark County Dist. Atty., Juvenile Div. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 337, 342–43 (2007) (distinguishing a preference from a presumption in order to clarify the holding of *Matter of Guardianship of N.S.*, 122 Nev. 305 (2006) which confused a preference for a presumption). [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. *Id.* at 343. [↑](#footnote-ref-5)
6. *Public Employees’ Benefits Prog v. Las Vegas Metropolitan Police Dept*., 124 Nev. 138, 147 (2008). [↑](#footnote-ref-6)
7. *Sims v. Eighth Judicial Dist. Court ex rel. County of Clark*, 125 Nev. 126, 130 (2009). [↑](#footnote-ref-7)
8. Nev. Assem. Comm. on Health and Human Servs., Hearing on A.B. 42, 73d Reg. Sess. (March 7, 2005). [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *In re Guardianship of N.S*., 122 Nev. 305, 313 (2006). [↑](#footnote-ref-13)
14. *Clark County Dist. Atty., Juvenile Div. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 337, 346 (2007). *See also* NRS 125C.0035(1) (determining custody in separation or divorce); NRS 128.105 (terminating parental rights); NRS 432B.480(1)(b)(2) (determining custody in abuse/neglect); all noting that in such child welfare proceedings, the best interests of the child should be the primary or even sole consideration. [↑](#footnote-ref-14)
15. *Clark County Dist. Atty*., 123 Nev. at 348. [↑](#footnote-ref-15)
16. The Fostering Connections to Success and Increasing Adoptions Act, P.L. 110-351. [↑](#footnote-ref-16)
17. *L. v. G*., 497 A.2d 215, 220 – 21, 203 N.J. Super. 385 (Ch. Div. 1985). [↑](#footnote-ref-17)
18. *Obey v. Degling*, 337 N.E.2d 601, 602 (N.Y. 1975). [↑](#footnote-ref-18)