**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.: J

) Dept. No.:

***CLIENT*,** ) HEARING REQUESTED

DOB: )

)

A Minor. )

)

**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 ORDER TO SHOW CAUSE**

MINOR, *CLIENT*, through his attorney, *Attorney*, Esq., of the Children’s Attorneys Project of Legal Aid Center of Southern Nevada, respectfully requests this Court order the FATHER, *Father*, to appear and show cause, if any, why he should not be adjudicated guilty of contempt of court and punished according to law for failing or refusing to obey a lawful order of this Court.

This motion is made and based upon Chapter 22 of the Nevada Revised Statutes, the attached Memorandum of Points and Authorities and exhibits, and any oral argument this Court may wish to entertain on the matter.

DATED this \_\_\_\_\_\_\_ day of *Month*, *Year*.

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

ATTORNEY CONTACT INFO

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**MEMORANDUM OF POINTS AND AUTHORITIES**

The Minor, *CLIENT*, respectfully requests this Court enter an Order compelling his Father, *Father*, to appear before this Court and show cause why he should not be held in contempt for failing to follow this Court’s Order issued during a protective custody review hearing on September 1, 2016. That Order required the Father to return *CLIENT’s* belongings and refrain from any contact with the Minor. *See*  Exhibit “1.” This Court ordered the Father to return the Minor’s belongings by delivering them to the Clark County Department of Family Services (DFS) by 5:00 p.m. on September 9, 2016. While the Father handed off items in garbage bags to DFS before the deadline, the Father only returned a few of *CLIENT*’s belongings. There were a number of things in the bags which did not belong to the Minor. More troubling, almost all of the items delivered which did belong to *CLIENT* were sabotaged. In addition to failing to return *CLIENT*’s things in good condition, the Father reached out to *CLIENT* through a webpage created by *CLIENT* to raise funds for a school-related activity. Those messages were demeaning and threatening, and in direct violation of this Court’s no contact order.

1. **FACTUAL BACKGROUND**

Seventeen year old *CLIENT* was taken into protective custody by Child Protective Services following an incident in which bystanders and law enforcement overheard *CLIENT*’s father, *Father*, threatening to harm *CLIENT* and his friend’s mother. *CLIENT* reported to the DFS Emergency Response Worker that his father drinks alcohol daily, and when he gets intoxicated, his Father verbally and physically abuses him. On the evening of August 21, 2016, *CLIENT* saw his father drunk at home, observed damage to the flat screen television, and put his father to bed after his father started urinating in the kitchen garbage can. After his father fell asleep, *CLIENT* ran to a friend’s home to avoid the abuse he believed would be coming when his Father awoke. The Father later woke up, and called *CLIENT* repeatedly, demanding *CLIENT* return home. After the urgency and the threats increased, *CLIENT*’s friends contacted 911. *CLIENT* was taken to Child Haven in the early hours of August 22, 2016.

This Court held the preliminary protective hearing on August 25, 2016. The Father appeared, and asked for DFS to return *CLIENT* to his home. The Father told the Court that he did not have a problem with alcohol, and stated he provides for *CLIENT*. The Court referred *CLIENT* to the Children’s Attorneys Project, and continued the hearing for one week for further discussion about the Minor’s return to his Father’s home.

On September 1, 2016, *CLIENT*, with his counsel and a foster parent, appeared before this Court for the continued protective custody hearing. *Father* returned for the hearing; CPS Investigator *Investigator* was present for DFS, along with Deputy District Attorney *District Attorney*. The Father immediately informed the Court that he no longer wanted anything to do with his son, that *CLIENT* was not welcome in his home, and that he wished to relinquish his parental rights. After some argument about the Father’s hurtful statements, *CLIENT*, through counsel, informed the Court that he wished to have some of his belongings from his Father’s home, as he left without packing. Those items included clothing, his choir tuxedo from school, a notebook, his passport, and some tickets to a local show. At first, the Father refused to agree to return those items, claiming that as the purchaser of those things, they belonged to him, not his son. The Father then announced that he had rid his home of *CLIENT*’s belongings, and that the clothing had been delivered to a donation drop box and the passport had been shredded. After that, the Father denied that *CLIENT* ever had a passport. *CLIENT* provided the Court and his Father a written list of the things he wanted. The Court ordered the Father to gather up the items and deliver them to the Department of Family Services by the end of the business day on September 9, 2016. *See,* Exhibit “1.”

Later that day, the Father contacted DFS to arrange for DFS to pick up *CLIENT*’s belongings[[1]](#footnote-1). DFS, in turn, took those belongings to *CLIENT* at his foster home. *CLIENT* was heartbroken when he opened the bags and saw the contents. As *CLIENT* and his foster parent reviewed the contents of the bags, they saw:

1. Shirts that did not belong to *CLIENT* (and were too big for him);
2. Ski jackets, which were not on the list;
3. *CLIENT*’s jeans, but the legs were cut off;
4. *CLIENT*’s suits, permanently stained with bleach or some other caustic substance;
5. The choir tuxedo, with a brown, smelly substance shoved in the pockets and smeared on the tie;
6. Dress shoes, both of which had been slashed along the side;
7. The hairdryer, but that became too hot to hold when turned on;
8. A note, written on the back of the courtdate slip, with numerous XOXOs and “Ha Ha” written on it.

*See, e.g.,* Photos of Suit and Note attached as Exhibit “2” and Exhibit “3” respectfully. *See also* Affidavit of *CLIENT* attached as Exhibit “4” and Declaration of Foster Parent attached as Exhibit “5.” The Father did not deliver any of the Coronado High School t-shirts, the Coronado HS hat, the requested shorts, numerous T shirts and polo shirts, the button up shirts, the black Composition Notebook, the show tickets, or his passport. *See* Exhibits “4” and “5.” *CLIENT*’s foster parent took the tuxedo to a professional cleaner to see if it could be remediated; after several attempts to clean, the tuxedo is usable. *CLIENT*’s foster parent replaced the shoes, and purchased additional clothing to give *CLIENT* a functional wardrobe. *See,* Exhibit “5.” In totally, *CLIENT*’s foster parents spent over $900 getting him ready to start the school year, with over $500 to partial replace the destroyed and missing clothing.

Two weeks ago, *CLIENT* created a webpage on a site called GoFundMe to raise money for a trip to Hawaii through the Coronado High School Choir Program. The school suggested using the website; *CLIENT* and a large number of his fellow choir members created campaigns on GoFundMe. Under the “Story” heading, *CLIENT* decided to talk about the recent change in his life arising from his removal from his father’s home. *See* Exhibit “4”. *CLIENT* talked about specific events with this father, and the fact that he felt safe now. On September 26, 2016, *Father* messaged *CLIENT* using the website in direct violation of the no contact order. *Id.* Two more messages followed in the ensuing days. In the messages, *Father* threatened *CLIENT* with legal action. *Id.* *CLIENT* received two messages from his father’s friends, telling *CLIENT* he should be ashamed and calling *CLIENT* a liar. *Id., see also* Exhibit “5.” The GoFundMe page has been deactivated.

1. **LEGAL AUTHORITY**

Pursuant to Chapter 22 of the Nevada Revised Statutes, this Court has the power to punish persons who fail or refuse to follow a lawful court order by finding them in contempt. NRS 22.010 sets forth a list of actions which are considered contempt and states:

NRS 22.010  Acts or omissions constituting contempts.  The following acts or omissions shall be deemed contempts:

1.  Disorderly, contemptuous or insolent behavior toward the judge while the judge is holding court, or engaged in judicial duties at chambers, or toward masters or arbitrators while sitting on a reference or arbitration, or other judicial proceeding.

2.  A breach of the peace, boisterous conduct or violent disturbance in the presence of the court, or in its immediate vicinity, tending to interrupt the due course of the trial or other judicial proceeding.

3.  Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

4.  Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

5.  Rescuing any person or property in the custody of an officer by virtue of an order or process of such court or judge at chambers.

6.  Disobedience of the order or direction of the court made pending the trial of an action, in speaking to or in the presence of a juror concerning an action in which the juror has been impaneled to determine, or in any manner approaching or interfering with such juror with the intent to influence the verdict.

7.  Abusing the process or proceedings of the court or falsely pretending to act under the authority of an order or process of the court.

NRS 22.030 provides the Court with the express authority to punish such contempt, even though committed outside the view and presence of the court: “If a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the masters or arbitrators.”[[2]](#footnote-2) *See* NRS 22.030 (2).

NRS 22.100 sets forth the permissible penalties for contempt. It states:

1.  Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.

2.  Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding $500 or the person may be imprisoned not exceeding 25 days, or both.

3.  In addition to the penalties provided in subsection 2, if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the contempt.

Subsection 2 permits this Court to order fines and jail time; subsection 3 permits an award of attorney’s fees and expenses.

Here, this Court ordered *CLIENT*’s Father to deliver *CLIENT*’s belonging by close of business on September 9, 2016; while the Father met the deadline set forth by the Court, the Father deliberately disobeyed this Court’s order in every other regard. Clothing that *CLIENT* used for day to day activities, like his Coronado T shirts and shorts, were not returned. Other items, like his pants, were ruined. Items which had special meaning to *CLIENT*, such as the suit which *CLIENT* wore to prom, were desecrated. In rendering the ruling, this Court made it clear that the belongings were to be returned in a usable state, going so far as to instruct the Father to retrieve belongings from the donation box and purchase replacement items for those which could not be located. By not providing *CLIENT* with his clothing and personal effects, the Father is in violation of this Court’s order. The fact that so many items were not returned or destroyed leads to the conclusion that this was an intentional act designed to hurt the Minor. The Father’s failure to provide the listed clothing, and the multiple acts of desecration are contemptable acts punishable by law.

The September 1, 2016 Order also contained a no contact provision. *Father* violated that Order by messaging his son three separate times using GoFundMe. The Order was not limited to specific types of communication. The Father’s messages each constitute contemptable acts punishable by law.

1. **CONCLUSION**

*Father* flagrantly violated this Court’s order to deliver his son’s belongings to DFS for his son’s use. While he turned over some items, the Father engaged in a series of intentional, malicious acts which rendered almost all of the items unusable. The manner in which the Father casually and smugly dismissed this Court's Order, as evidenced by his note, is the very definition of contempt. Additionally, the Father disobeyed this Court’s Order not to have contact with his son by messaging *CLIENT* through a website. Those messages were hurtful; they were not sent with *CLIENT*’s best interests in mind. As such, the Father should be held in contempt and the following penalties should be imposed:

1. A $500 fine;
2. An additional fine in an amount sufficient to allow *CLIENT* to replace the missing and destroyed belongings;
3. A period of imprisonment; and

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1. Attorney’s fees in the amount of $3,000 made payable to the Children’s Attorneys Project of Legal Aid Center of Southern Nevada (See Affidavit, attached as Exhibit “6,” in support thereof).

Dated this \_\_\_ day of *Month*, *Year*.

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

ATTORNEY CONTACT INFO

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

***CERTIFICATE OF SERVICE***

I HEREBY CERTIFY that on the \_\_\_\_\_\_\_ day of *Month*, *Year*, I served the foregoing ***MOTION FOR ORDER TO SHOW CAUSE***, 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*

1. CPS Investigators *Investigator 1 and Investigator 2* went to Father’s home to pick up CLIENT’s belongings. *Investigator 1* informed the undersigned that the Father made a video recording of himself gathering CLIENT’s belongings while CPS was in the home at the instruction of the Father’s attorney. The Father took *Investigator 1* into CLIENT’s room to show there was nothing left in CLIENT’s closet or dresser. At argument on this Motion, the undersigned will seek to elicit testimony, if needed, from *Investigator 1* as to the lack of additional items in Father’s home. [↑](#footnote-ref-1)
2. N.R.S. 22.030 also allows this Court to hear Motions for Orders To Show Cause in cases such as this:

   “Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person. The provisions of this subsection do not apply in:

   . . .

         (b) Any proceeding described in subsection 1 of NRS 3.223, whether or not a family court has been established in the judicial district. [↑](#footnote-ref-2)