**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,** ) HEARING REQUESTED

DOB: Date of Birth )

)

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 RELATIVE PLACEMENT**

COMES NOW, Attorney, Esq., of Firm, by and on behalf of CLIENT, a minor, and submits this Motion for Relative Placement. This Motion is based upon the following Memorandum of Points and Authorities, the papers and

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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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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.** **STATEMENT OF FACTS**

**A. Background of CLIENT’s Removal**

CLIENT,10,was placed into protective custody on Date, as a result of physical abuse allegations against his natural mother, Mother.[[1]](#footnote-1) On or about Date,CLIENTwas made a ward of the Court and placed in the custody of the Department of Family Services (“DFS”).

Upon removal, CLIENT was placed in a foster home. While in his foster placement, CLIENT had consistent visits with Mother. These visits were supervised by CLIENT’s maternal grandmother, Maternal Grandmother. Initially, Maternal Grandmother requested placement of CLIENT; however, CLIENT wanted to remain in his current foster home so he could deal with the trauma of the physical abuse that he had suffered. Maternal Grandmother, respecting CLIENT’s wishes, did not further pursue the placement, and CLIENT remained in his foster home.

In Month / Year, Mother was hospitalized for liver and kidney failure. During this time, CLIENT visited his mother in the hospital daily. Maternal Grandmother, who wanted to be a strong support for her daughter and CLIENT, was also present for the visits. Unfortunately, in Month / Year, Mother passed away.

Following the death of Mother, Maternal Grandmother, again, requested that CLIENT be placed in her home. This was due, in large part, to CLIENT’s change of heart – he now wanted to be placed with his maternal grandmother. Unfortunately, DFS did not approve the placement because Maternal Grandmother’s adult son lived in her home and he had a felony conviction from eight years ago. The conviction was for possession of a stolen vehicle.

**B. Maternal Grandmother and Maternal Uncle’s Background Information**

From the time CLIENT was an infant, Maternal Grandmother has always been an integral part of his life. CLIENT and his mother lived with the maternal grandparents for six years.[[2]](#footnote-2) During those years, Maternal Grandmother helped take care of CLIENT. She watched him while his mother was at work. She picked him up from school. Maternal GrandmothertookCLIENTon family trips and spent the summers with him. CLIENTdeveloped a close bond with his grandmother. She was his “second mother.”

After the death of his maternal grandfather, CLIENTbegan looking to his uncle, Maternal Uncle, as the central male figure in his life. CLIENTand Maternal Uncledeveloped a deep bond. In fact, Maternal Uncleis one of the few people who can calm CLIENTdown when he becomes upset.[[3]](#footnote-3)

Maternal Unclehas a felony conviction for possession of a stolen vehicle which occurred over eight years ago. However, since being released from prison and granted parole in Year, Maternal Unclehas not been involved in any criminal proceedings and has worked hard to clean up his life. He obtained employment and recently married. He has a two year old son, whom CLIENTgets along with very well. Although Maternal Uncleand his family currently live with Maternal Grandmother, he and his wife are in the process of purchasing their own home. Even though Maternal Uncle will eventually be living separate from CLIENT, he wishes to find a home that is close to Maternal Grandmotherso he can continue to be involved in CLIENT’s life.

CLIENTwants to live with his maternal grandmother so he can continue to receive the love, support, and security that he gets from his family.

**II. LEGAL ARGUMENT**

**A. It is in CLIENT’s best interests to be placed with MATERNAL GRANDMOTHER, whom the court should give preference to because of the existing familial connection.**

The Nevada Legislature and the Nevada Supreme Court have long recognized that the overarching consideration in the placement and/or custody of children is the best interests of the child.[[4]](#footnote-4)  In *Clark County District Attorney, Juvenile Division v. Eighth Judicial District Court*, the Nevada Supreme Court explained, “…the child’s best interest *necessarily* is the main consideration for the district court when exercising its discretion concerning placement decisions.”[[5]](#footnote-5) Additionally, the Nevada Supreme Court noted in *State Div. of Child and Family Services v. Eighth Judicial Dist. Court,* that, although it is not expressly included in the Nevada Statutes or Regulations, “DCFS is responsible for acting in the best interests of the children.”[[6]](#footnote-6)

Furthermore, the Nevada legislature determined that, in cases where a child has been found in need of protection, the Court should look to several factors in determining placement but give preference to relatives.

NRS 432B.550 provides in pertinent part:

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:

. . .

(b) **Preference** must be given to placing the child in the following order:

(1) With any person related within the fifth degree of consanguinity to the child or a fictive kin, and who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.

In this case, Maternal Grandmother (and Maternal Uncle) are within the fifth degree of consanguinity and therefore, fall into the category of familial preference. Moreover, according to NRS 432B.550(4), the Court may consider whether a child resided with a particular relative for three (3) years or more. Here, CLIENT lived with Maternal Grandmother for over six years. She often helped her daughter care for CLIENT and was an integral part of his life.

As NRS 125C.0035(4)(g) suggests, the physical, developmental and emotional needs of a child should be given substantial weight in determining a child’s best interests.[[7]](#footnote-7) Maternal Grandmother will provide CLIENT with the individual support and guidance necessary to positively affect his physical, developmental and emotional needs. CLIENT has had past behavioral issues, and is currently being assessed for Autism/Aspergers based on his various developmental delays. Maternal Grandmother has expressed that she will do what is necessary to ensure that CLIENT gets the appropriate treatment and services. She has already researched about Autism support groups and various therapies, and she is prepared to transport CLIENT to whatever school deemed appropriate based on the possible diagnoses and assigned Individualized Education Plan (“IEP”).

Further, Maternal Grandmother has stated that she would like to eventually move forward with obtaining guardianship of CLIENT. Maternal Grandmother herself grew up in the foster care system, and does not want to see CLIENT languish in such an environment. In order for CLIENT’s physical, developmental and emotional needs to be met, CLIENT should be placed with his grandmother. She is prepared to keep him safe and secure. She knows that CLIENTdepends on her totake care of his needs.

In reviewing all factors relating to CLIENT’s placement with his grandmother, it is evident that CLIENT’s best interests would be served in honoring the familial placement preference and ordering the placement of CLIENT with Maternal Grandmother.

**B. MATERNAL UNCLE’S CONVICTION DOES NOT FALL INTO THE CATEGORIES OF CRIMES AUTOMATICALLY DENIED, AND THEREFORE, HIS CONVICTION MAY BE WAIVED TO ALLOW FOR CLIENT TO BE PLACED WITH MATERNAL GRANDMOTHER.**

NAC 127.420(2) provides that there are certain enumerated crimes which will result in an immediate denial of an application to become a prospective adoptive parent. Specifically, NAC 127.420(2)(k) states:

2. An application to adopt must be denied if:

. . .

(k) Except as otherwise provided in subsection 3, the agency which provides child welfare services determines that, based upon a substantiated investigation, the applicant or a member of the applicant's household who is 18 years of age or older:

(1) Has been convicted of a crime involving harm to a child;

(2) Has charges pending against him or her for a crime involving harm to a child; or

(3) Has been arrested and is awaiting final disposition of the charges pending against him or her for a crime involving harm to a child.

Here, Maternal Uncle has never committed a crime against a child. He was convicted of felony possession of a stolen vehicle. This conviction, over eight (8) years ago, in no way relates to the provisions set forth in NAC 127.420(2)(k). NAC 127.420(2)(k) only denies approval of an application when an individual has been arrested for a crime against a child.

Additionally, NAC 127.420(2)(l) provides in pertinent part:

2. An application to adopt must be denied if:

. . .

(l) The applicant or a member of the applicant's household who is 18 years of age or older has charges pending against him or her for a felony conviction involving, or has been arrested and is awaiting final disposition of possible or pending charges against him or her involving:

(1) Child abuse or neglect;

(2) Spousal abuse;

(3) Any crime against children, including child pornography;

(4) Any crime involving violence, including rape, sexual assault or homicide, but not including any other physical assault or battery; or

(5) Physical assault, battery or a drug-related offense, if the assault, battery or drug-related offense was committed within the last 5 years.

To reemphasize, Maternal Uncle has never committed abuse, neglect or an actual crime against a child. Maternal Uncle has never been arrested for any crimes involving spousal abuse, rape, sexual assault, homicide or drug-related offenses. As previously mentioned, his offense was possession of a stolen vehicle, which occurred over eight (8) years ago. As such, because the offenses listed in sections (k) and (l) do not apply to Maternal Uncle, and he would not be subject to an automatic denial.

Finally, subsection 3 explains that a person who does not fall into the provisions of paragraphs (k) and (l), but has been involved in a misdemeanor, gross misdemeanor, or even a felony, only needs to obtain an additional approval to be considered for placement as an adoptive parent. In particular, NAC 127.420(3) clarifies:

3. An agency which provides child welfare services shall not, without the approval of the Administrator of the Division or the designee of the Administrator, assist in the adoption of a child by a person who the agency determines has been convicted of one or more felonies, gross misdemeanors or misdemeanors. The Administrator of the Division or the designee of the Administrator shall not approve such an adoption if the applicant has been convicted of a felony described in paragraph (1) of subsection 2. . .

To protect a child’s welfare, offenses such as violent crimes, crimes against children, and recent violations all produce automatic denials. However, subsection 3 gives an individual, who is not automatically denied by subsection 2, the opportunity for a waiver. Since Maternal Uncle’s offenses do not give rise to denial pursuant to this regulation, his conviction may be waived. Accordingly, if Maternal Uncle’s conviction would not bar him from possibly being allowed to adopt a child, then surely it should not hinder CLIENT from being placed with his grandmother merely becauseMaternal Uncleresides in her home.

**III. CONCLUSION**

Although CLIENT is only nine years old, he has suffered the loss of both parents and the trauma of being placed in foster care due to physical abuse. He now wishes to be placed with his maternal grandmother with whom he has an incredible bond and who helped raise himsince he was a baby.

As stated above, Maternal Grandmother falls under the familial preference provided by NRS 432B.550. Further, Maternal Uncle’s convictions are not automatically barred by NAC 127.420(2) and should not prohibit CLIENT’s placement with an appropriate, loving family member.

Therefore, it is respectfully requested that this Court place CLIENTwith his maternal grandmother because it is in his best interest.

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 RELATIVE PLACEMENT** 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. CLIENT’s father, Father, passed away of a drug overdose in Year. [↑](#footnote-ref-1)
2. CLIENT’s maternal grandfather, Maternal Grandfather, passed away in Year. [↑](#footnote-ref-2)
3. CLIENT has had past behavioral issues, and is currently being assessed for Autism/Aspergers based on his various developmental delays. [↑](#footnote-ref-3)
4. *Clark County Dist. Atty. v. Eighth Judicial District Court,* 167 P.3d 922, 928 (Nev. 2007). *See also*, N.R.S. 125C.0035(1) (determine custody in separation or divorce), 128.105 (terminate parental rights), and 432B.480(1)(b)(2) (determine 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-4)
5. *Clark County Dist. Atty,* 167 P.3d at 928. (emphasis added) [↑](#footnote-ref-5)
6. *State Div. of Child and Family Services, Dept. of Human Resources v. Eighth Judicial Dist. Ct.,* 119 Nev. 655, 660, 81 P.3d 512, 515 (2003). [↑](#footnote-ref-6)
7. NRS 125C.0035(4) (Although this statute enumerates “best interest” factors in regards to the custody of children whose parents have ended their relationship, become separated or dissolved their marriage, the factors provide a helpful guideline for the court to use in determining the child’s best interest in many different forums, as the Nevada Supreme Court utilized this provision (formerly NRS 125.480) in *Clark Cty Dist. Atty.,* which similarly analyzed the best interest of a child in abuse and neglect proceedings.) [↑](#footnote-ref-7)