**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 )

 )

 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 AN ORDER FOR SIBLINGS TO REMAIN PLACED TOGETHER**

COMES NOW the minor children, CLIENT 1, CLIENT 2, and CLIENT 3, by and through their attorney, Attorney, Esq., of Firm, and hereby files this Motion for an Order for Siblings to Remain 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 POINTS AND AUTHORITIES**

1. **STATEMENT OF FACTS**

 CLIENT 1, age 13, CLIENT 2, age 5, and CLIENT 3, age 3, were placed in protective custody on Date due to their parents’, Mother and Father, inability to adequately supervise and care for them. Mother refused to attend or participate in any hearings or follow a case plan and subsequently, her parental rights were terminated on Date. Father is deceased as of Date. The children have since been free for adoption.

 After being removed from their parents’ care, CLIENT 1, CLIENT 2, and CLIENT 3 were placed with their maternal grandmother, Maternal Grandmother, on Date, where they have remained ever since. CLIENT 1, CLIENT 2, and CLIENT 3 have lived together their entire lives. They have created a strong sibling bond. CLIENT 1 has stressed that she does not want her siblings to be far from her. All three children have also bonded with their grandmother and have felt safe in her home since moving in nearly two years ago.

Because of Maternal Grandmother’s age, she was originally unsure of whether she could be an adoptive placement for all three siblings and stated that she only wanted to adopt CLIENT 1. Maternal Grandmother identified fictive kin, Fictive Kin as a fictive kin placement who agreed to adopt CLIENT 2 and CLIENT 3. The Fictive Kin now states that she is no longer willing to pursue adoption of CLIENT 2 and CLIENT 3. Maternal Grandmother would now like to adopt all three siblings and keep them together.

Maternal Grandmother has taken affirmative steps in order to keep the siblings together in her care. She applied for ICPC which has initially been denied because of money issues and marital problems. Maternal Grandmother now has a job in order to alleviate the money issues that caused her denial. In addition, Maternal Grandmother and her husband are now attending marital counseling to work on their relationship. Maternal Grandmother can now resubmit approval for ICPC for all three children. The Department of Family Services (hereinafter “Department”) has indicated they may place CLIENT 2 and CLIENT 3 in a different home, separating them from their sister and grandmother whom they have developed a strong bond with, even though all three siblings would like to be placed together.

1. **LEGAL ARGUMENT**

**A.** **This Court has Original and Exclusive Jurisdiction Over this Matter.**

**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., 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](http://www.leg.state.nv.us/NRS/NRS-031A.html#NRS031A), 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 CLIENT 1, CLIENT 2, and CLIENT 3 into protective custody, pursuant to a Petition – Abuse/Neglect filed by the Department of Family Services under N.R.S. § 432B.470, this Court acquired subject matter jurisdiction over this case, and personal jurisdiction over the subject minors.

**B. Sibling Relationships are too Important to Ignore or Dismiss.**

Children who enter foster care are already at a disadvantage. In most cases they have been removed from their parents because their parents were abusive or neglectful. Despite the abuse and neglect, most of these children have bonded to their parents and are severely traumatized by being taken from their homes and parents. When they are further separated from the rest of their family members (brothers and sisters) their anxiety is compounded.

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 one another. Psychologists have found, “from these social interactions, the child develops a foundation for later learning and personality development. Experiences in the areas of sex-role, moral, motor, and language development are all found in the context of social interactions.” Joel V. Williams, *Sibling Rights to Visitation: A Relationship Too Valuable to be Denied*, 27 U. Tol. L. Rev. 259, 261 (1995). Accordingly, the court in L. v. G., 203 N.J. Super. 385, 497 A.2d 215 (Ch. Div. 1985), noting that a sibling relationship provides a context for social development (in that siblings teach one another social skills through their long-term interactions which help a child develop a foundation for later learning, personality development, and the proper context of sex roles), 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 with 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.” *Id*.

Studies on attachment demonstrate that the sibling bond may be as important in childhood development as the bond between parent and child. “Attachment research describes an enduring emotional bond manifest by efforts to be in close proximity, especially in times of stress.” Patton, William Wesley and Latz, Dr. Sara, *Severing Hansel from Gretel: An Analysis of Siblings’ Association Rights*, 48 U. Miami L. Rev. 745, 761 (1994).

Courts have noted the importance of maintaining the sibling bond. In Obey v. Degling, 337 N.E.2d 601 (N.Y. 1975), the court noted that, “Young brothers and sisters need each other’s strengths and association in their everyday and often common experiences, and to separate them, unnecessarily, is likely to be 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. In the final analysis, when these children become adults, they will have only each other to depend on.”

Furthermore, in L. v. G., 203 N.J. Super. 385, 391, 497 A.2d 215, 218 (Ch. Div. 1985), the court also noted that “Surely, nothing can equal or replace either the emotional and biological bonds which exist between siblings, or the memories of trials and tribulations endured together, brotherly or sisterly quarrels and reconciliations, and the sharing of secrets, fears and dreams. To be able to establish and nurture such a relationship is, without question, a natural, inalienable right which is bestowed upon one merely by virtue of birth into the same family.”

Accordingly, many courts acknowledge: “It has always been a strong policy in our law that in the absence of compelling reasons to the contrary, siblings should be raised together whenever possible.” Ken R. v. Arthur Z., 546 Pa 49, 61, 682 A.2d 1267, 1273 (1996) (*citing* Albright v. Commonwealth, 491 Pa. at 237, 421 A.2d at 160 (1980)); see also Ferencak v. Moore, 300 Pa.Super. 28, 445 A.2d 1282 (1982).[[1]](#footnote-1)

**C. Nevada Law Requires that the Department of Family Services Keep Siblings Together.**

Children wrenched from the home of parents/guardians rely heavily on a continued association with the only family left to them – their siblings – for the sense of love, belonging and stability that all children need. Recognizing this, N.R.S. § 432B.550(6) creates a mandatory presumption that children must be placed with their siblings. N.R.S. § 432B.550(6) states that:

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.

(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.

(2) In a foster home that is licensed pursuant to chapter 424 of NRS.

It is the express public policy of this State to *presume* that co-placement with siblings is in the best interests of a child, and that there is an *affirmative duty* on State and County child welfare agencies to keep sibling groups intact.

**D. Federal Law Requires that Nevada Makes “Reasonable Efforts” to Keep Siblings in Foster Care Together, as a Condition of Title IV-E Funding.**

The Fostering Connections to Success and Increasing Adoptions Act (P.L. 100-351), enacted on October 7, 2008 with strong bipartisan support, offers important improvements for children who enter foster care or are at risk of entering foster care, to maintain meaningful family connections. The Act recognizes that sibling connections are significant to a child’s emotional and social development since siblings often provide the connection and stability that is no longer available from the child’s parents.

Accordingly, the Act tries to improve outcomes for such children by requiring states to make reasonable efforts to place siblings together, whether in foster, kinship guardianship, or adoptive placements, unless placing them together would be contrary to their safety or well-being. If the siblings are not placed together, the agency must make reasonable efforts to ensure that the siblings maintain their connections to each other through frequent visitation or other ongoing interaction. An exception to maintaining connections is permissible only if such contact would be contrary to the safety or well-being of one or more of the children. (42 USC §671(a)(31)).

The requirement to make reasonable efforts to place children together (or to maintain frequent visitation or other ongoing interaction when placement together is contrary to a child’s safety or well-being) is a state plan requirement. It therefore applies to all children in foster care, kinship placements or adoptive homes, on or after the effective date of the Act on October 7, 2008. (42 USC §671(a)(31)).

Fostering Connections does not define the term, “reasonable efforts”. As a starting point, at the very least, the Department must try to place siblings who come into care together in the same home. It must also make efforts to identify whether a child entering foster care already has siblings in care. Recognizing that it is important to keep in mind the unique challenges associated with caring for multiple children, particularly when those children have been traumatized and may need special attention, as part of its due diligence in identifying and notifying relatives that children have been removed from their parents’ custody, the Department should inquire about whether relatives can care for a group of siblings and *what services and supports* would make it possible for these relatives (or other caregivers) to care for the siblings together. Since greater assistance is often available to licensed caregivers, the Department should also take actions to help relative caregivers become licensed foster parents. Fostering Connections allows states to waive non-safety related licensing criteria on a case-by-case basis for individual children in relative foster family homes, to prevent licensing standards from hindering sibling placement.[[2]](#footnote-2)

Here, CLIENT 1, CLIENT 2, and CLIENT 3 have lived together for their entire lives. The Department has a duty to identify what services and supports would make it possible for Maternal Grandmother to become licensed and care for the three siblings. Maternal Grandmother has taken affirmative efforts in order to be approved for the ICPC for adoption of all three children and licensing. The Department has the duty to take actions to assist Maternal Grandmother in becoming licensed.

1. **CONCLUSION**

When children are taken from their parents and placed in the protective custody of the State or County, Nevada law presumes that keeping them together is in their best interests. A child welfare agency has the affirmative obligation, under Nevada and federal law, to place siblings together. Unless the Department provides this Court with evidence to overcome the presumption that co-placement with siblings is in CLIENT 1, CLIENT 2, and CLIENT 3’s best interests, this Court should not allow the Department to shirk its responsibility to the three siblings and must require that the Department justify why they wish to proceed with separate placements. That it may be difficult or inconvenient for the caseworker to find appropriate services for the placement is not sufficient to overcome the children’s right to preserve the love and mutual support system engendered and maintained through a relationship with his siblings.

 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 AN ORDER FOR SIBLINGS TO REMAIN PLACED 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:

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

 An employee of

 Firm

1. . It is arguable that a State’s refusal to preserve sibling relationships also violates a child’s constitutional rights. The constitutional right to associate with family members is protected by the *due process clause of the fourteenth amendment*. Santosky v. Kramer*,* 455 U.S. 745, 753, 71 L.Ed.2d 599, 102 S.Ct. 1388 (1982); *accord* Quilloin v. Walcott*,* 434 U.S. 246, 255, 54 L.Ed.2d 511, 98 S.Ct. 549 (1978). No right is more sacred, and this right can be abrogated only to protect other very important interests. See Santosky, 455 U.S. at 753; Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-40, 39 L.Ed.2d 52, 94 S.Ct. 791 (1974). The Supreme Court has held that the constitutionally protected “family" extends beyond the parent/child relationship. Moore v. East Cleveland, 431 U.S. 494, 504, 52 L.Ed.2d 531, 97 S.Ct. 1932 (1977) (plurality opinion) (holding that a grandmother and her two grandsons constituted a “family" entitled to constitutional protection and invalidating a zoning restriction that prohibited them from living together). The *fourteenth amendment* protects extended family members’ right to live together because the American tradition “is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins . . . sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.” *Id.* In deciding whether a particular relationship is constitutionally protected, the Supreme Court has considered three factors: the presence or absence of a biological relationship; whether the origins of the relationship are natural, separate and apart from state law; and whether protection of the interest in the relationship derogates from the liberty interests of the natural parents. The Supreme Court further clarified the constitutional sources of associational freedoms in Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984), and identified the freedom of intimate association as “an intrinsic element of personal liberty,” *Id*. at 104 S.Ct. 3251. In describing this constitutionally protected liberty, the Court recognized that "choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State....” *Id*. at 3249. Included in that category are "[f]amily relationships, [which] by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctly personal aspects of one's life.” *Id*. at 3250.

Although the Supreme Court has not explicitly decided whether siblings have a constitutionally based right of association, other federal courts have not been reluctant to extend the Moore and Roberts holdings to recognize a sibling’s constitutional claim to *continued* sibling association (as opposed to money damages for disruption of that relationship by a wrongful death). In Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982), the Second Circuit Court held that the State of Connecticut violated the due process rights of Rivera when the state removed her half-brother and half-sister from her home without explanation, and placed them in a foster home.The court stated that Rivera “possessed an important liberty interest in preserving the integrity and stability of her family” and that the two children possessed a “liberty interest in maintaining, free from arbitrary state interference, the family environment that they had known since birth.” Rivera, 696 F.2d at 1026. The same result was reached in Aristotle P. v. Johnson, 721 F. Supp. 1002 (N.D. Ill. 1989), where children who had been made wards of the court and placed in foster care brought a 1983 action against the Illinois Department of Children and Family Services, alleging a violation of their due process and associational rights. The children contended that the state's practice of putting siblings in separate placements and then failing to provide visitation among the siblings violated their freedom to associate under the First Amendment and violated their substantive due process rights. The district court held that the Fourteenth Amendment embraces the right to associate with one's relatives, and the state could infringe on a sibling's right of association only if it had a compelling interest that could not be achieved through means significantly less restrictive of associational freedoms. *Id*. at 1005. Similarly, in Patel v. Seales, 305 F.3d 130 (2d Cir. 2002) (based upon very peculiar facts), the court stated that Roberts established a sliding scale for determining the amount of constitutional protection an association deserves, but “the relationships at issue in this case -- those between Patel and his father, siblings, wife, and children -- receive the greatest degree of protection because they are among the most intimate of relationships. Moreover, even though plaintiff did not live with his father and siblings, we must assume those relationships, too, were of such an intimate nature as to warrant the highest level of constitutional protection.” [↑](#footnote-ref-1)
2. 7. *New Help for Children Raised by Grandparents and Other Relatives: Questions and Answers About the Fostering Connections to Success and Increasing Adoptions Act of 2008*, collaborative work by: the Center for Law and Social Policy, Children’s Defense Fund, Alliance for Children and Families/United Neighborhood Centers of America, American Bar Association Center on Children and the Law, Annie E. Casey Foundation/ Casey Family Services, Casey Family Programs Center for the Study of Social Policy, ChildFocus, Child Welfare League of America, Family Violence Prevention Fund, Generations United, GrandFamilies of America, National Association of County Human Services Administrators, National Center for State Courts, National Foster Care Coalition, North American Council on Adoptable Children, Children and Family Research Center - School of Social Work at University of Illinois at Urbana-Champaign, and Voices for America’s Children (January 2009). [↑](#footnote-ref-2)