**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 )

)

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 SIBLING VISITATION**

COMES NOW the minor children, CLIENT 1, CLIENT 2, CLIENT 3, and CLIENT 4, by and through their attorney, Attorney, Esq., of Firm, and hereby files this Motion for an Order for Sibling Visitation. 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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**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **STATEMENT OF FACTS**

CLIENT 1, CLIENT 2, CLIENT 3, and CLIENT 4, ages 14, 13, 10, and 8 years old, respectively, were placed into protective custody on Date, because of physical abuse allegations against their mother’s boyfriend.

At the time of their removal, the children were placed into three separate foster homes. CLIENT 1 and CLIENT 2were placed together in a foster home in Henderson, CLIENT 3 was placed in a foster home in North Las Vegas, and CLIENT 4was placed into a foster home near North Las Vegas.

On Date, at the preliminary protective hearing, the Department of Family Services (DFS) was ordered to search for a placement that would take all four children and to facilitate visitation between the children until such a placement could be found. *See Exhibit “A.”*

On or about Date, after DFS completed a background and home safety check, the children were placed with their Maternal Aunt in North Las Vegas. However, about a month later when the Maternal Aunt applied for her foster care license, DFS removed CLIENT 3 and CLIENT 4 and placed them in another foster home located in Henderson. DFS removed the children on the grounds that the Maternal Aunt’s home was too small and did not meet licensing requirements. Instead of helping the Maternal Aunt access resources that would enable her to care for all four children, DFS separated the children, and CLIENT 3 and CLIENT 4 were placed into their third home.

The children have not seen nor talked to each other since Date, the day CLIENT 3 and CLIENT 4were removed from theMaternal Aunt’s home. That was two months ago. Two months without sibling contact. During this time, the siblings have missed CLIENT 3’s birthday. The children and Maternal Aunt have asked DFS several times to set up sibling visits, but it has been to no avail.

**II. LEGAL ARGUMENT**

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

Original jurisdiction over this matter is vested in this Court:

**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, CLIENT 3, and CLIENT 4 into protective custody, pursuant to a Petition –Abuse/Neglect filed by DFS under N.R.S. 432B.470, this Court acquired subject matter jurisdiction over this case, and personal jurisdiction over the subject minors.

**B. Nevada Law Requires that the Department of Family Services Place Siblings Together.**

Since 1985, Nevada law has protected children from abuse and neglect by their parents or legal guardians, authorizing their placement into the protective custody of the State or County.

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, the Nevada Legislature created a presumption that it is in a child’s best interest to be placed together with his siblings. N.R.S. 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:

**(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. (emphasis added)

Here, DFS has failed or refused to satisfy this legislative mandate: CLIENT 3 and CLIENT 4 reside separately from their siblings.

**C. If the Department of Family Services is Unable to Keep Siblings Together, It Must Develop a Plan for Visitation among the Separated Siblings.**

Whenever siblings cannot be placed together, N.R.S. 432B.580 requires that DFS provide, and the Court approve, a written sibling visitation plan.

N.R.S. 432B.580 provides in pertinent part as follows:

2. An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes:

. . .

(b) Information concerning the placement of the child in relation to the child's siblings, including, without limitation:

(1) Whether the child was placed together with the siblings;

(2) Any efforts made by the agency to have the child placed together with the siblings;

(3) Any actions taken by the agency to ensure that the child has contact with the siblings; and

(4) If the child is not placed together with the siblings:

(I) The reasons why the child is not placed together with the siblings; and

**(II) A plan for the child to visit the siblings, which must be presented at the first hearing to occur after the siblings are separated and approved by the court. The plan for visitation must be updated as necessary to reflect any change in the placement of the child or a sibling, including, without limitation, any such change that occurs after the termination of parental rights to the child or a sibling or the adoption of a sibling.** (emphasis added)

In the instant case, CLIENT 3 and CLIENT 4 have not seen nor had telephone contact with CLIENT 1 and CLIENT 2 since they were removed from the Maternal Aunt’s home. CLIENT 1 and CLIENT 2 report that the last time they had contact with their younger siblings was on Date, and they are concerned about their siblings. The Maternal Aunt is ready and willing to facilitate visits, but DFS will not give her the contact information for the foster parents caring for CLIENT 3 and CLIENT 4. Although the Maternal Aunt asked DFS to give the other foster parents her contact information, she has yet to receive a telephone call.

Counsel would further submit that DFS compounded the problem by placing the siblings at opposite sides of the valley: CLIENT 1 and CLIENT 2 are in North Las Vegas, while CLIENT 3and CLIENT 4 are in Henderson. Without the cooperation of DFS and the foster parents, sibling visitation has proven to be ridiculously impossible.

The language of the statute is not conditional: the obligation to develop a visitation plan is not made optional for DFS, nor is it made to depend upon a written request to DFS or a petition to this Court by the siblings. Unless DFS provides this Court with evidence to overcome the presumption that co-placement and, absent that, visitation with the siblings is not in their best interests, this Court should not allow DFS to shirk its responsibility to the children and must allow them to maintain their sibling relationship with each other.

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 and, failing that, to **ensure** that a child continues to have visitation with his siblings to maintain the family bond. At each hearing to review a child’s placement apart from his brothers or sisters, the child care agency must justify to the Court why it has been unable to keep siblings together, and, having failed in this primary duty, provide the Court with a visitation plan to sustain the sibling relationship during the children’s protective custody. This approved visitation plan is memorialized by a Court order for sibling visitation.

**III. 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 to either place siblings together or, failing this, provide a plan for visitation that will preserve their sibling relationship. This plan must be approved by a Court and memorialized in a sibling visitation order. In so doing, the Court should consider only what is in the best interests of the children: mere inconvenience to a foster parent or a DFS caseworker is not sufficient to overcome the child’s right to preserve the love and mutual support system engendered and maintained through a sibling relationship.

Accordingly, CLIENT 1, CLIENT 2, CLIENT 3, and CLIENT 4 respectfully request that this Court Order the Department of Family Services to develop a plan for sibling visitation, and present it to this Court for approval, in the form of an Order For Sibling Visitation, within fourteen (14) days from the date of the hearing on this Motion.

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 SIBLING VISITATION** 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

Exhibit “A”