**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,** ) Courtroom:

DOB: Date of Birth ) HEARING REQUESTED

)

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 TO JOIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, DIVISION OF AGING AND DISABILITY SERVICES, AND DESERT REGIONAL CENTER AS PARTIES**

COMES NOW, Attorney, Esq., of Firm, by and on behalf of CLIENT, a minor, and submits this Motion to Join the Department of Health and Human Services, Division of Public and Behavioral Health, Division of Aging and Disability Services, and Desert Regional Center as Parties.

This Motion is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and such other documentary and oral evidence as may be presented at the hearing of this Motion.

DATED this Day day of Month, Year.

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

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND STATEMENT**

CLIENT came into custody of the Department of Family Services (hereinafter “DFS”) on Date. He is sixteen (16) years old and is currently placed at Facility in City/State where he has been since Date. According to the last treatment plan from Facility, CLIENT’s anticipated date of discharge is Date. CLIENT’s mother, Mother, plans on being involved in CLIENT’s life, but is not a placement resource once CLIENT returns to Las Vegas.

CLIENT is currently a client of Desert Regional Center (hereinafter “DRC”). DRC falls under the Division of Aging and Disability Services which is under the Department of Health and Human Services. DRC (and its’ contracted private vendors) will more than likely be the long term placement option for CLIENT. Alternatively, DRC will be able to provide support services to assist CLIENT should another community placement option arise.

**II. LEGAL ARGUMENT**

**A. DRC, THE DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, THE DIVISION OF AGING AND DISABILITY SERVICES, AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES HAVE A LEGALLY ENFORCEABLE OBLIGATION TO PROVIDE** CLIENT **WITH BOTH TREATMENT AND PLACEMENT**

1. **CLIENT falls into the category of individuals to whom the Department of Health and Human Services, the Division of Public and Behavioral Health, the Division of Aging and Disability Services, and DRC have a legal obligation pursuant to Nevada Statutes to treat and place.**

NRS 433 et seq., and NRS 435 et seq., set forth the duties owed to persons suffering from mental illness and/or intellectual disabilities. NRS 433.003(2) states that the legislative intent of the statute is “To charge the Division of Public and Behavioral Health, and the Division of Child and Family Services, of the Department [of Health and Human Services] with recognizing their duty to act in the best interests of their respective consumers by placing them in the least restrictive environment.” [[1]](#footnote-1)

NRS 433.164 defines “Mental Illness” as: “a clinically significant disorder of thought, mood, perception, orientation, memory or behavior which seriously limits the capacity of a person to function in the primary aspects of daily living, including, without limitation, personal relations, living arrangements, employment and recreation. The term does not include other mental disorders that result in diminished capacity, including, without limitation, epilepsy, intellectual disability, dementia, delirium, brief periods of intoxication caused by alcohol or drugs or dependence upon or addiction to alcohol or drugs.”

NRS 433.099 and NRS 435.007(9) define “Intellectual disability” as: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”

Furthermore, NRS 435.400(1) states: “The division facilities providing services for persons with intellectual disabilities or persons with developmental disabilities are designated as (a) Desert Regional Center…”[[2]](#footnote-2)

The foregoing statutes place an obligation upon the Department of Health and Human Services (hereinafter “Department”), its underlying Divisions, and the facilities thereunder, including Desert Regional Center, with acting in the best interests of all those who seek, either on his own or through another person, and can benefit from, the Divisions’ care, treatment, and training.

As stated earlier, CLIENT is currently a client of DRC. What CLIENT is asking of DRC, the Department of Health and Human Services, the Division of Public and Behavioral Health, and the Division of Aging and Disability Services is to fulfill its statutory duties and obligations to him. Further, NRS 433.354 and NRS 435.465 give the Department, through its’ Divisions, the power to execute contracts or agreements with essentially any party, private or public, in order to meet its statutory obligations to persons who are suffering from mental illness or intellectual disabilities.

As the foregoing statutory provisions illustrate, DRC, through the Division of Aging and Disability Services and the Department of Health and Human Services, has the statutory power and obligation to "think outside the box" to treat its’ consumers, which includes entering into contracts with qualified mental health professionals and any public or private entity it chooses. To ensure that DRC and the agencies under which it falls meet their legal obligation, it is necessary to join these entities as parties.

1. **This Court has the Power to Join the Department of Health and Human Services, the Division of Public and Behavioral Health, the Division of Aging and Disability Services and Desert Regional Center as Parties under NRS 432B.4655.**

NRS 432B.4655 governs the joinder of parties to any proceeding concerning the protection of a child. In full, it reads:

**432B.4655. Joinder of governmental entity or other person to certain proceedings to enforce legal obligation of such entity or person**

A court may issue an order to join any governmental entity or other person as a party in any proceeding concerning the protection of the child to enforce a legal obligation of the entity or person to the child if, before issuing the order, the court provides notice and an opportunity to be heard to the governmental entity or person.

NRS 432B.4655 gives the Court the power to join any governmental entity or other person as a party in a child welfare proceeding to enforce a legal obligation to the child. NRS 432B.4655 was originally introduced as Section 13 to Assembly Bill 42 during the Seventy-Third Session of the Nevada Legislature in 2005. Assembly Woman Barbara Buckley presented the following information regarding the statute to the Assembly Committee on Health and Human Services:

One last note is that I'm proposing an amendment to this bill (...). Since the Interim Committee, we received a request from Judge Hardcastle in Clark County who oversees most of these cases. ***What the amendment would do is allow the court to make any reasonable orders of government entities to join the court proceedings, and then to make all reasonable orders for their care, supervision, custody, conduct, and maintenance in support of the child, including medical treatment.*** This is based on an amendment that came out of California. . . . Right now, for example, in Washoe and Clark County, those counties are in charge of the abused child. Let's say, for example, they need mental health treatment of a significant level. That's the State's responsibility. ***If they want to make sure the child is getting counseling at school, for example, those other entities-the school, the state- aren't before the court. They just have the county agency.*** It's to make sure that the care can be continuous, and a judge can talk to those other government actors about how to provide the best treatment for the child. That's the purpose of the amendment. (emphasis added)[[3]](#footnote-3)

The intent of Assembly Bill 42, Section 13, is further clarified in the Minutes of the Senate Committee on Human Resources and Education:

Assembly Bill 42 was recommended by the Legislative Committee. The measure will provide that a person or governmental entity has a legally enforceable obligation to provide care to a child. An example would be if the State is responsible to provide mental-health services to a child, a representative from the State is to be in court. [[4]](#footnote-4)

The legislative history of AB 42, Section 13, elaborates on the purpose of NRS 432B.4655. The purpose is to put an end to the argument set forth by some governmental agencies that the Court does not have the power to order them to do anything. Through this law, this Court absolutely has the power to bring in DRC, the Division of Public and Behavioral Health, the Division of Aging and Disability Services, and the Department of Health and Human Services and then order these entities to provide necessary services and placement for persons, including minors, who have sought their services. CLIENT has obtained the services of DRC as a client. This is the time for the Court to exercise its’ power under NRS 432B.4655, to bring in the Department of Health and Human Services, the Division of Public and Behavioral Health, the Division of Aging and Disability Services, and DRC as parties and Order these entities to provide the services and treatment that CLIENT needs.

**III. CONCLUSION**

CLIENT has been in the custody of DFS since Year. As a foster care child who is suffering from both intellectual disabilities and mental health issues, CLIENT has the statutory right to have all of his needs met in the least restrictive setting possible. To meet CLIENT’s significant needs that will continue into adulthood, the long-term commitment of DRC to CLIENT and full cooperation with DFS is critical. NRS 432B.4655 gives this Court the power to order all necessary services and treatment for a child in custody, which includes ordering governmental entities to fulfill their obligations to that child.

CLIENT respectfully requests that this Court exercise its’ statutory powers to immediately join the Department of Health and Human Services, the Division of Public and Behavioral Health, the Division of Aging and Disability Services, and Desert Regional Center as parties and further issue all appropriate orders as are necessary to fully address and treat his significant needs, including but not limited to, long-term placement.

Respectfully submitted this Day day of Month, Year.

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

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

***CERTIFICATE OF SERVICE***

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **MOTION TO JOIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, DIVISION OF AGING AND DISABILITY SERVICES, AND DESERT REGIONAL CENTER AS PARTIES** 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

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1. The Division of Child and Family Services is a parallel agency to the Division of Public and Behavioral Health. Both fall under the umbrella of the Department of Health and Human Services. [↑](#footnote-ref-1)
2. DRC falls under the Division of Aging and Disability Services which is also under the Department of Health and Human Services. [↑](#footnote-ref-2)
3. Hearing on A.B. 42 before the Assembly Comm. on Health and Human Services, 73rd Leg. (Nev., March 7, 2005). [↑](#footnote-ref-3)
4. Hearing on A.B. 42 before the Senate Comm. on Human Resources and Education, 73rd Leg. (Nev., May 4, 2005). [↑](#footnote-ref-4)