**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 1,** ) HEARING REQUESTED

DOB: )

)

**CLIENT 2,** )

DOB: )

)

**CLIENT 3,** )

DOB: )

)

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 CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS**

COMES NOW, CLIENT 1, CLIENT 2, and CLIENT 3, by and through their attorney of record, *Attorney*, Esq. of the Children’s Attorneys Project of Legal Aid Center of Southern Nevada, Inc., and brings this Motion for an Order to Allow CLIENT 1, CLIENT 2, and CLIENT 3 to Testify by Alternative Means. This Motion is made pursuant to NRS 50.570 et seq., and is further based upon the Affidavit attached hereto and any other such documentary or oral evidence as may be presented at the hearing set for this Motion.

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

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

ATTORNEY CONTACT INFO

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

This matter is set for an adjudicatory hearing on *Date* regarding allegations set forth in abuse and neglect petition two filed against the natural father, *Father*. The Deputy District Attorney prosecuting the case has indicated she will be calling *CLIENT 1*, *CLIENT 2*, and *CLIENT 3*, minors, to testify at the hearing. The children have expressed that they are terrified of their father. They have, to date, refused any contact with their father.

These children were living with their mother until *Date*. Their mother had sole legal and physical custody of the children. She passed away on *Date*, reportedly from a massive heart attack. At that time, they began living with their maternal aunt, *Maternal Aunt*. On *Date*, *Father* showed up at the maternal aunt’s home and attempted to take the children. The children were terrified and the aunt called the police. Law enforcement showed up, and after seeing how terrified the children were of *Father*, they transported the children to Child Haven.

The children reported they are extremely fearful of *Father*. They reported that he tried to drown them, that he beat them, and that he beat the youngest child with a hammer. *CLIENT 1* also reported that she saw *Father* rape and beat her mother.

*Father* has a violent past and he has prior criminal convictions for physically abusing *CLIENT 1* when she was 8 months old. He has felony convictions for coercion against their mother. CPS has previously observed him to be erratic and hostile. He has extensive domestic violence history. *Father* is an incredibly violent person. These children want no contact with him whatsoever.

Due to the fact that this father has perpetrated horrific abuse upon these children, and that having to be in his presence will likely cause the children harm, it is respectfully requested that *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* be permitted to testify by alternative means in accordance with the statutory provisions set forth below.

**II. LEGAL ARGUMENT**

NRS 50.570 grants this Court discretion to determine if a child witness should be allowed to testify by an alternative method. This Court is permitted to allow alternative testimony if the court finds that 1) it is necessary to serve the best interests of the child or 2) to enable the child to communicate with the fact finder. NRS 50.580.

When making this determination, the court shall consider:

1. The nature of the proceeding;
2. The age and maturity of the child;
3. The relationship of the child to the parties in the proceeding;
4. The nature and degree of emotional trauma the child may suffer in testifying; and
5. Any other relevant factor.

NRS 50.580(2).

If the court determines that either of the prongs of NRS 50.580 has been met, NRS 50.590 requires the court to consider further factors to consider when determining whether to allow a child witness to testify by an alternative method. The court must consider:

1. Alternative methods reasonably available;
2. Available means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

Permitting these children to testify in the alternative is necessary to serve their best interests and will permit them to communicate with the fact finder. Additionally, all of the factors outlined in NRS 50.590 are met and those factors weigh heavily in favor of permitting *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to testify by alternative method.

1. **NRS 50.580(2) Standards Have Been Met.** 
   1. **Permitting *CLIENT 1*, *CLIENT 2***, and ***CLIENT 3* to Testify by an Alternative Method will Serve Their Best Interests.**

NRS. 50.580 gives a court discretion to permit a minor to testify by alternative method if it is in the child’s best interest. In this case, it is absolutely in *CLIENT 1*, *CLIENT 2*, and *CLIENT 3*’s best interest to testify outside the presence of their father.

In the instant case, the children are still very young and they are **terrified of their father**. *CLIENT 1* is ten years old, *CLIENT 2* is eight years old, and *CLIENT 3* is seven years old. *Father* is accused of heinous acts of violence against these children, including attempting to drown them, beating them, and hitting the youngest with a hammer. He has prior criminal convictions for physically abusing *CLIENT 1* when she was 8 months old. He has felony convictions for coercion against their mother. CPS has previously observed him to be erratic and hostile. He has extensive domestic violence history. *Father* is an incredibly violent person. These children want no contact with him whatsoever. Forcing these children to testify in front of their father, forcing them to be that close to him physically, is sure to have a detrimental effect on their well being.

Permitting *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to testify outside the presence of *Father* is necessary to forestall unnecessary distress and any further harm to these young children.

* 1. **Permitting *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to Testify by an Alternative Method will Ensure that They Are Able to Freely Communicate with the Fact Finder.**

NRS. 50.580 gives a court discretion to permit a minor to testify by alternative method if it will aid the children in presenting information to the fact finder. In this case, forcing these children to testify in the presence of their father will cause them extreme distress which will impact their ability to communicate with the factfinder.

In order to ensure that the Court is receiving the best information regarding this Petition, we herein ask this Honorable Court to permit *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to testify in the alternative.

These children should be permitted to testify in the alternative as it will serve their best interests and enable the children to communicate with the fact finder as is required by NRS 50.580.

1. **The Factors in NRS 50.590 are Satisfied and Weigh In Favor of Permitting FAITH, OWEN, AND *CLIENT 3* to Testify By Alternative Method.**

NRS 50.590 states that if the factors in NRS 50.580 are met, then the presiding officer shall determine whether to allow a child to testify by alternative method. When reviewing the factors laid out in NRS 50.590, it is clear that all of the factors are met and the children should be permitted to testify in the alternative.

* 1. **Alternative Methods Are Readily Available. NRS 50.590(1).**

The courtrooms are now easily equipped with audio/visual equipment in the anteroom so that the responding parent can watch and hear the proceeding as it occurs. The responding parent is then able to confer with their counsel prior to cross-examination of the witness. Alternative methods are readily available in this matter.

* 1. **There is No Other Mechanism to Reduce the Trauma to *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* other than Permitting These Children to Testify By Alternative Methods. NRS 50.590(2).**

*CLIENT 1*, *CLIENT 2*, and *CLIENT 3* have suffered extreme physical abuse at *Father*’s hands. The children have expressed to the police, to the Department of Family Services, and to counsel that they are terrified of this man. The children are likely to suffer trauma if forced to testify in his presence and are likely to shut down. There is no mechanism available to reduce the trauma that *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* will likely suffer if they have to sit in a courtroom and testify as to what they have suffered and witnessed in their home while *Father* stares at them.

* 1. **The Nature of the Case and Allegations Support Permitting *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to Testify By Alternative Methods. NRS 50.590(3).**

The allegations in this case are that *Father* committed heinous acts of violence on these children, including attempting to drown them, beating them, and hitting the youngest with a hammer. The nature of this case clearly supports permitting *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to testify by alternative methods.

* 1. **The Rights and Interests of the Parties Weighs in Favor of Permitting *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to Testify By Alternative Methods. NRS 50.590(4).**

It is well known that a person responding to allegations by the State and/or the Department of Family Services have a right to an attorney and the right to aid that attorney in their defense. However, *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* have a competing right to retain as much of their mental well-being as possible. *Father*’s ability to aid in his defense will be minimally infringed upon due to the audio/visual equipment that is available in the courthouse. Weighing the minimal infringement of *Father*’s rights at trial versus the significant emotional trauma that *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* are likely to suffer, the facts clearly weigh in support of permitting *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to testify by an alternative method.

* 1. ***CLIENT 1*, *CLIENT 2*, and *CLIENT 3’s* Testimony is Central to Determining a Number of the Allegations in the Petition. NRS 50.590(5).**

The petition against *Father* alleges, among other things, that he physically abused *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* by attempting to drown them, beating them, and hitting the youngest with a hammer. Since the mother has passed away, there are no other surviving witnesses who can testify to this abuse. *CLIENT 1*, *CLIENT 2*, and *CLIENT 3’s* testimony will be central to determining a number of the allegations in the petition.

* 1. ***CLIENT 1*, *CLIENT 2*, and *CLIENT 3* Will Likely Suffer Extreme Emotional Trauma if They are Not Permitted to Testify By Alternative Methods. NRS 50.590(6).**

The children have experienced extreme physical abuse by *Father*. They have refused to have any contact with him, even though he is their father. They have consistently reported to everyone that they are terrified of this man. These children are likely to suffer from extreme emotional trauma if they are forced to testify in *Father*’s presence.

Due to the private nature of the allegations contained in the petition, *CLIENT 1*, *CLIENT 2*, and *CLIENT 3*’s young age, the salience of their testimony with regard to proving the allegations, and the potential trauma *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* will suffer if they are not permitted to testify in the alternative, NRS 50.580 supports the court allowing *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to testify by alternative means. Further, all requirements delineated in NRS 50.590 are satisfied, including the requirement that there be reliable alternative methods available by which to obtain the needed testimony from the child. These children should be permitted to testify by alternative methods.

**III. CONCLUSION**

This Honorable Court is tasked with determining the truth from evidence gathered at the adjudicatory hearing. Central to determining the issues in this case, is the credibility of the witnesses. *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* would like to provide their best testimony to this Court. In order to do so, they are asking this Court to grant permission to testify by alternative means. Additionally, NRS 50.570, et seq., entrusts to this Honorable Court the power to prevent a child from enduring unnecessary trauma by permitting that child witness to testify by alternative means when certain enumerated conditions are met. As set forth in the preceding Motion, each and every condition required for permitting alternative means of testifying are met in this matter. Therefore, it is respectfully requested that this Court issue an order allowing *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* to testify by an alternative method.

Respectfully submitted this \_\_\_\_\_\_ day of *Month*, *Year*.

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

ATTORNEY CONTACT INFO

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

**AFFIDAVIT OF COUNSEL**

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

I, *Attorney*, after being first duly sworn, deposes and says:

1. I am a licensed practicing attorney, admitted in the State of Nevada and an attorney with the Children’s Attorneys Project of Legal Aid Center of Southern Nevada, Inc., appointed to represent the subject minors, *CLIENT 1*, *CLIENT 2*, and *CLIENT 3*. I have personal knowledge of the facts alleged herein or the assertions are based on information and belief.
2. I have met with *CLIENT 1*, *CLIENT 2*, and *CLIENT 3*.
3. *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* have expressed that they are terrified of their father, *Father*.
4. *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* have stated that their father has perpetrated terrible physical abuse upon them.
5. Upon information and belief, being forced to testify in front of their father will negatively impact *CLIENT 1*, *CLIENT 2*, and *CLIENT 3*’s ability to provide information to the Court.
6. Upon information and belief, the experience of testifying before their father will cause *CLIENT 1*, *CLIENT 2*, and *CLIENT 3* an increased likelihood of severe emotional damage and make more traumatic an already difficult task.

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

ATTORNEY

SUBSCRIBED AND SWORN to before me

this \_\_\_\_ day of *Month, Year*, by *Attorney*.

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

NOTARY PUBLIC in and for

County of Clark, State of Nevada

***CERTIFICATE OF SERVICE***

I hereby certify that on the \_\_\_\_\_\_\_ day of *Month, Year*, I served the foregoing **MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS**, 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