**PRMEM**

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 the Parental Rights as to: ) Case No.: J

) Dept. No.:

**CLIENT,**  )

)

A MINOR. )

)

**SUBJECT MINOR CLIENT’S PRE-TRIAL MEMORANDUM**

COMES NOW, Minor Child, CLIENT, by and through her attorney of record, Attorney, Esq. of Firm, and submits this Pre-Trial Memorandum in support of the Motion to Terminate Parental Rights filed by the Department of Family Services (“DFS”).

DATED this Day day of Month, Year.

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

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**PRE-TRIAL MEMORANDUM OF POINTS AND AUTHORITIES**

1. **INTRODUCTION**

This case involves twenty-month old CLIENT, born on Date, to Mother and Father. On Date, Mother and Father gave birth to another child, Sibling 2, who is the subject of Abuse and Neglect Petition #3.

CLIENT resides in a foster home with her four-year-old sister, Sibling 1, who was born on Date. Mother relinquished her parental rights as to Sibling 1 and entered into an open adoption agreement with the current foster parents. DFS’ plan for CLIENT is adoption by the same foster parents who will adopt Sibling 1, if the motion to terminate parental rights is granted.

Mother’s ongoing toxic relationship with the man who broke one child’s bones and went on to father her other two subsequent children (whom she has yet to parent) is central to the court’s consideration of CLIENT’s future.

1. **STATEMENT OF FACTS**

**Sibling 1’s Story**

CLIENT’s story begins with four-year-old Sibling 1, whose documented history of severe physical abuse at the hands of Father brought this case before the court almost three years ago and has kept it open to this day. Sibling 1’s ordeal highlights the extreme danger CLIENT will face should she be unified with her parents.

Sibling 1 was removed from the home of Mother and Father on Date, almost three years ago, as a result of severe and horrific physical abuse at the hands of Father. On that date, Sibling 1 was taken to Southwest Medical Quick Care due to a lump on her side. X-rays and scans revealed sixteen fractures – fifteen rib fractures and one clavicle fracture. The medical experts determined that Sibling 1’s injuries could not possibly have been accidental and that the injuries had been inflicted within the prior six months. During that time, Sibling 1 was being cared for exclusively by Mother and Father.

Both Mother and Father consistently provided explanations that were inconsistent and irreconcilable given the medical evidence. At one point, they offered that Sibling 1 could have been injured by a babysitter in New York, before they moved to Las Vegas; however, the six-month medical timeline debunked that explanation. At another point, they offered that Sibling 1 was injured when she fell into a stack of plastic shelves. Then it was Sibling 1 falling off a toy chair into a plastic toy drawer. Again, these explanations proved inconsistent with the medical evidence.

Sibling 1 was only eighteen months old when her bones were fractured and could not speak for herself.

As the investigation pointed toward Father as the perpetrator of Sibling 1’s injuries, Mother supported her boyfriend. At or about the time of Sibling 1’s second birthday in Month Year, Mother called Father her “soulmate” and said she believed him “120 percent” when he denied fracturing her daughter’s bones.

As set forth in more detail below, Mother was eighteen weeks pregnant with CLIENT, Father’s baby, at the time.

In the Report for Permanency and Placement Review filed on Date, in anticipation of the Datereview hearing, DFS case manager, Caseworker reported that Mother and Father continued to deny that the injuries were non-accidental. Although faced with overwhelming medical evidence to the contrary, they continued to postulate unsustainable theories, such as rickets. Although Mother stated she was willing to separate from Father, according to the report, she continued to assert her disbelief that he caused the injuries. At the Date review hearing, the court changed the permanency plan from reunification to termination of parental rights and adoption.

The court report prepared in anticipation of the Date review hearing, painted a more positive picture of Mother. That report noted that she had begun counseling, and as a result, had come to realize that Sibling 1’s injuries were the result of abuse. It further noted that, based on Mother’s new understanding that Father had fractured her daughter’s bones, she promised that Father will never be allowed to be around Sibling 1 again.

When asked by the court about her contact with Father, Mother stated on the record that she only speaks to Father about CLIENT and has no desire to be in a relationship with him.

**CLIENT’s Story**

CLIENT was born on Date and was removed the same day. Although both Motherand Father visit CLIENT faithfully, those visits have always been supervised at Child Haven, and in the case of Father, within visual contact of the visitation supervisor. Although given multiple opportunities to complete a case plan, Mother has not done so. Mother was discharged from individual therapy on Date, because treatment providers found that her lack of honesty, among other factors, interfered with her progress in therapy. In the case of Father, he has not even started working his case plan.

CLIENT’s world is her foster parents and beloved sister, Sibling 1. From the day she was born, she has known no other family, no other home. CLIENT and Sibling 1 are siblings joined at the hip. They have never been apart. The evidence will show that separating these siblings at this critical juncture will cause serious emotional damage to both children.

Mother and Father continue to live in an alternate universe of lies, denials and deception about the nature of their relationship and the cause of Sibling 1’s injuries. Father continues to deny that he fractured Sibling 1’s bones, and Mother continues to believe him.

In the most recent Report for Permanency and Placement Review filed on Date in anticipation of the Date hearing, Case Manager Caseworker again reported that Mother and Father continue to deny that Sibling 1’s injuries were non-accidental, even in the face of overwhelming evidence to the contrary. Caseworker further noted that although Mother was willing to separate from Father, “she continued to assert her disbelief that Father caused Sibling 1’s injuries.”

In this same report, Caseworker stated that over the past year, Mother and Father have offered a storyline that purports that they have a platonic relationship that is connected only by sharing a child. Caseworker further reported that Mother and Father were living together in Month and Month of Year and that Mother lied about her living arrangements “because she was scared.”

**Sibling 2’s Story**

Sibling 2, the subject of Petition #3, is Mother’s second child with Father. He was born full-term in Month Year, placing his month of conception in or about Month Year. Two months later, at the permanency review held on Date, Mother stated on the record that she only spoke to Father about CLIENT and had no desire to be in a relationship with him. Based upon these representations, the court gave Mother additional time to work her case plan and opened the door to a possible trial home visit. One month later, on Date, Mother and Father were seen together, and two months later, in Month Year, they were cohabiting. When confronted by Caseworker about the Date encounter, Mother feigned amnesia and then stormed out of the meeting. When confronted about cohabiting with Father, Mother said she lied because she was scared.

Moreover, Sibling 2’s very existence contradicts Mother’s assertion that her relationship with Father was purely platonic.

Based on the foregoing, this trial should (1) produce evidence that Mother has not severed her relationship with Father; (2) produce evidence that the denials, lies and deceptions that have characterized this case for the past 30-plus months continue to fester; and (3) produce evidence that it is not safe to return CLIENT to Mother and Father, and that their parental rights should be terminated for the safety and best interest of the child.

CLIENT is in a loving home with prospective adoptive parents and a sister who is deeply attached to her.

1. **LEGAL ARGUMENT**
2. **THIS COURT MUST DECIDE BY CLEAR AND CONVINCING EVIDENCE THAT TERMINATION OF PARENTAL RIGHTS IS IN THE BEST INTEREST OF THE CHILD AND THAT PARENTAL FAULT OR UNFITNESS EXISTS.**

In the termination of parental rights, the State must establish that termination is in the best interests of the children along with a finding of parental fault pursuant to at least one of the grounds set forth in NRS 128.105.

NRS 128.105 states that:

1. The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and [NRS 128.106](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST128.106&originatingDoc=NDC4DAB6092D011E7A7AED8B3207EF67A&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) to [128.109](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST128.109&originatingDoc=NDC4DAB6092D011E7A7AED8B3207EF67A&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)), inclusive, and based on evidence and include a finding that:

(a) The best interests of the child would be served by the termination of parental rights; and

(b) The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of [NRS 432B.393](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST432B.393&originatingDoc=NDC4DAB6092D011E7A7AED8B3207EF67A&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) or demonstrated at least one of the following:

(1) Abandonment of the child;

(2) Neglect of the child;

(3) Unfitness of the parent;

(4) Failure of parental adjustment;

(5) Risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents;

(6) Only token efforts by the parent or parents:

(I) To support or communicate with the child;

(II) To prevent neglect of the child;

(III) To avoid being an unfit parent; or

(IV) To eliminate the risk of serious physical, mental or emotional injury to the child;

(7) With respect to termination of the parental rights of one parent, the abandonment by that parent; or

(8) The child was conceived as a result of a sexual assault for which the natural parent was convicted.

2. Before making a finding pursuant to subparagraph (5) of paragraph (b) of subsection 1, if the child has been out of the care of his or her parent or guardian for at least 12 consecutive months, the court shall consider, without limitation:

(a) The placement options for the child;

(b) The age of the child; and

(c) The developmental, cognitive and psychological needs of the child.

Additionally, the Supreme Court of Nevada has stressed that “the purpose of Nevada’s termination statute is not to punish parents, but to protect the welfare of children.” In re Termination of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000). In N.J., the Court rejected the jurisdictional/dispositional standard set forth in Champagne v. Welfare Div. Of Nev. State Dept., 100 Nev. 640, 647, 691 P.2d 849 (1984), for determining whether or not to terminate parental rights, and instead, based its decision on legislative amendments to NRS 128.105:

[W]e now abandon Champagne’s strict adherence to find a parental fault to terminate parental rights before the district court considers the best interests of the child. [Footnote omitted.] In conformance with NRS 128.105, we adopt a best interests/parental fault standard for termination cases. Accordingly, the district court, in determining whether to terminate parental rights must consider both the best interests of the child and parental fault.

The Supreme Court has often referred to the termination of parental rights as a “civil death penalty” because such a termination ends the parents – children relationship. In re Parental Rights as to N.D.O., 121 Nev. 379, 115 P.3d 223 (2005). In N.D.O., this Court stressed that the State also has a strong interest in protecting children from abuse and neglect and to guarantee they have a chance for a stable family life. It is not a question of either the State’s interest in protecting the children or the parent’s interest, but of weighing both interests. As the Court stated, “We expect that both the parent’s interest and the State’s interests will almost invariably be strong in termination hearings.” Id at 226). In this case, the District Court should weigh the interests of CLIENT to have a chance to live a life free of medical neglect and the risk of serious physical, mental and emotional injury versus returning to her mother and father.

Mother has established a clear record of sticking by her man in the face of overwhelming evidence that he fractured sixteen bones in her baby daughter’s body. This is why the court granted the State’s request to change the permanency plan for Sibling 1 to TPR and adoption. Her “epiphany,” revealed at the Date review hearing, yielded support, encouragement and more time to reunify. Her lack of candor about her continuing relationship with the perpetrator and her desire to bring him back into Sibling 1’s life, dashed all hope of reunification.

Indeed, Mother not only did not sever her relationship with Father, she went on to have two more children with him, with the most recent child born just two months ago.

CLIENT’s bond is clearly with the foster parents and her sister Sibling 1. She has never lived with Mother or Father, and they have never parented her. The totality of the parent child relationship is supervised visits at Child Haven and some doctor’s visits. It is highly unlikely that she identifies Mother and Father as her parents.

Compounding the lack of bonding is the overarching concern that Mother has learned nothing since she relinquished her rights to Sibling 1. By accepting Father’s continuing denial of responsibility for Sibling 1’s injuries, Mother has demonstrated an inability to keep CLIENT safe from the perpetrator. CLIENT deserves to have a chance at living a happy, productive life free from physical endangerment and neglect.

1. **THIS COURT MUST CONSIDER AND COMPARE THE QUALITY OF THE CHILD’S LIFE IN FOSTER CARE VS. THE QUALITY OF LIFE WITH THE PARENT FROM WHOM THE CHILD WAS REMOVED.**

Nevada statute requires the court at TPR to consider, among things, how the child has become integrated into the prospective adoptive family and to make comparisons about the relative capacities of the foster parents vs. the biological parent to provide for the child’s physical emotional and medical needs.

NRS 128.108 provides in pertinent part as follows:

**NRS 128.108. Specific considerations where child has been placed in foster home**. If the child is in the custody of a public or private agency and has been placed and resides in a foster home and the custodial agency institutes proceeding pursuant to this chapter regarding the child, with an ultimate goal of having the child’s foster parent or parents adopt the child, the court shall consider whether the child has become integrated into the foster family to extent that the child’s familial identity is with that family, and whether the foster family is able and willing to permanently is able and willing permanently to treat the child as a member of the family. The court shall consider, without limitation:

1. The love, affection and other emotional ties existing between the child and parents, and the child’s ties with the foster parents.
2. The capacity and disposition of the child’s parents from whom the child was removed as compared with that of the foster family to give the child love, affection and guidance and to continue the education of the child.
3. The capacity and disposition of the parents from whom the child was removed as compared with that of the foster family to provide the child with food, clothing and medical care and to meet the other physical and emotional needs of the child.
4. The length of time the child has lived in a stable, satisfactory foster home and the desirability of the child continuing to live in that environment.
5. The permanence as a family unit of the foster family.
6. The moral fitness, physical and mental health of the parents from whom the child was removed as compared with that of the foster family.
7. The experience of the child in the home, school and community, both when with the parents from whom the child was removed and when with the foster family.
8. Any other factor considered by the court to be relevant to a particular placement of the child.

Without belaboring each individual point of comparison, the following should be noted:

With regard to paragraph 1, it is undisputed that CLIENT has affection and emotional ties to her foster parents and not to her biological parents. The trial evidence will show, that Mother and Father have never parented CLIENT, and contact over the last twenty months has never progressed beyond a weekly supervised visit at Child Haven and doctor’s visits. On the eve of TPR, there has yet to be even a few hours of unsupervised visits, let alone a sleepover.

With regard to paragraph 3, all of CLIENT’s physical and medical needs are being met.

With regard to paragraph 4, CLIENT has been placed with her current family since Date, the day she was born. Evidence will show that CLIENT’s placement has been stable and the family nurturing and loving.

1. **THE PRESUMPTION OF TOKEN EFFORTS APPLIES DUE TO THE LENGTH OF TIME CLIENT HAS BEEN IN CARE.**

NRS 128.109 provides as follows:

NRS 128.109 Determination of conduct of parent; presumptions.

1. If a child has been placed outside of his or her home pursuant to chapter 432B of NRS, the following provisions must be applied to determine the conduct of the parent:
2. If the child has resided outside of his or her home pursuant to that placement for 14 months out of any 20 consecutive months, it must be presumed that the parent or parents have demonstrated only toke efforts to care for the child as set forth in subparagraph (6) of paragraph (b) of subsection 1 of NRS 128.105.
3. If the parent or parents fail to comply substantially with the terms and conditions to reunite the family within 6 months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment as set forth in subparagraph (4) of paragraph (b) of subsection 1 of NRS 128.105.
4. If a child has been placed outside of his or her home pursuant to chapter 432B, and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.
5. The presumptions specified in subsections 1 and 2 must not be overcome or otherwise affected by evidence of failure of the State to provide services to the family.

As to paragraphs 1(a) and 2, it is undisputed that CLIENT came into foster care on Date and remains in foster care as of today. Her placement falls within the statutory time frame, and the 128.109 presumptions of token efforts and best interest apply.

As to case plan compliance, the most important and relevant requirement of Mother’s case plan was being able to identify and articulate the trauma Sibling 1 suffered at the hands of Father. Not only has this not happened, but throughout these proceedings, she has doubled down on her belief that Father did not abuse Sibling 1. She has clung to medically unsustainable explanations, such as falling off a toy chair, falling into plastic shelves and even rickets.

Even after she announced her epiphany in open court on Date, she has continued to maintain contact with Father and even had another baby with him. Father continues to deny injuring Sibling 1, and Mother either continues to believe that he did not injure Sibling 1, or she does believe, but just doesn’t care. Either way, she continues to lack protective capacity, and the presumptions in NRS 128.109 apply.

Between Father’s denials and Mother’s disbelief, any relief short of termination of parental rights and adoption puts CLIENT’s life in great jeopardy.

1. **CONCLUSION**

The best interests of CLIENT are to have this termination of parental rights granted and she becomes free and eligible for adoption. This biological father has steadfastly refused to take any responsibility for the serious injuries he has inflicted on Sibling 1, and this biological mother has proven incapable of putting the protection and safety of her daughter above her relationship with her “soulmate.”

Based on the aforementioned and the clear and convincing evidence that will be presented at trial, it is respectfully requested that this court grant the petition to terminate the parental rights of Mother and Father.

DATED this Day day of Month, Year.

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

ATTORNEY CONTACT INFO

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***CERTIFICATE OF SERVICE***

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **SUBJECT MINOR CLIENT’S PRE-TRIAL MEMORANDUM** 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