Representing Children in Abuse and Neglect Cases

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LEGAL AID CENTER
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A MANUAL
FOR PRO BONO
ATTORNEYS

This Manual is drafted to provide general information to pro bono attorneys on handling an abuse or neglect case in Clark County, Nevada. It is not intended to be legal advice on a specific matter involving a specific case.

The legal information is believed to be current, as of November, 2019.

Although the client is referred to as “he” and “him” throughout the Manual, obviously, there are as many if not more dependent children who are female, and the use of the masculine pronoun includes the feminine pronoun (and vice-versa, where applicable).

Nothing in this Manual should substitute for reference to Nevada statutory or case law. When in doubt, please contact your mentor at the Children’s Attorneys Project for information concerning current law or current practice in the Eighth Judicial District, Juvenile Court.

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What Am I Getting Myself Into?

Representing a child who has been abused or neglected can be a frustrating and time-consuming, yet very rewarding, experience. Depending on the age of your client, his ability to recount what happened to him or what he wants may be limited. Sometimes the facts surrounding his abuse or neglect will be horrifying or heart-rending.

Your client will have been taken from his home (and perhaps, separated from his siblings) and placed into an institution or unfamiliar foster care setting, without fully understanding what is happening or why. He is likely to be angry or resentful of this change. He may believe that he is being punished or that what has happened is somehow his fault. He may "act out", or be sullen, uncommunicative or depressed – all of which may be appropriate responses to the trauma he has experienced.

Accepting this child as a client means **you must advocate for what he wants** – not what any other person or professional, *including you*, thinks *ought* to happen or is *in his best interests* (leave this for the CASA). Your job is to promote what the child wants to the caseworker, the therapist and, most importantly, to the court, and **work to make that happen**. In most cases, this will require you to confront an inefficient and impersonal bureaucratic and legal system. If what he wants is impossible, work to achieve a viable alternative (i.e., the child wants to live with mom - who is in prison; perhaps living with grandmother until mom is released and able to care for the child is an alternative your client can accept). And there is no telling what the child may want: he may be in foster care and want to live with a relative in another state; he may want to be adopted; he may be in a residential treatment center (locked facilities like Desert Willow or Spring Mountain) and desperately want to be anywhere but there; or he may want to be on his own.

Chapter 2 of this Manual gives a brief description of the legal process that is initiated once an allegation of abuse or neglect is made. However, the issues affecting the child you have been asked to represent are unlikely to be limited to these standard court proceedings. Usually there are other issues – appropriate therapeutic or educational services, changes in placements, open adoption agreements, etc. – that will require your intervention on behalf of your client. An in-depth discussion of every issue that may arise is beyond the scope of this Manual and may not be necessary for your particular client. Therefore, the attorneys of the Children's Attorneys Project (CAP) are available as mentors and experts to advise and assist you with issues that can arise beyond the ordinary task of ensuring that the permanency plan adopted by the court is acceptable to your client. Please feel free to contact them for assistance.

All children need a voice and an attorney to represent their rights. Your willingness to advocate for an abused or neglected child means there is one less child who will be re-victimized by the legal process.

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CHAPTER ONE
Acronyms and Definitions

The following is a list of abbreviations and terms that you are likely to encounter.

Abuse: N.R.S. *§* 432B.020 provides:

1. "Abuse or neglect of a child means, except as otherwise provided in subsection 2:
    a. physical or mental injury of a non-accidental nature;
    b. sexual abuse or sexual exploitation; or
    c. negligent treatment or maltreatment as set forth in NRS 432B.140, of a child caused or allowed by a person responsible for his welfare under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.
2. A child is not abused or neglected, nor is his health or welfare harmed or threatened for the sole reason that his
    a. Parent delivers the child to a provider of emergency services pursuant to NRS 432B.630, if the parent complies with the requirements of paragraph (a) of subsection 3 (delivery of unwanted newborn less than 30 days old); or
    b. Parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment. This subsection does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to NRS 62E.280.
3. As used in this section, "allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected."

The terms "*mental injury*", "*physical injury*", "*sexual abuse*", "*sexual exploitation*" and "*negligent treatment or maltreatment*" are specifically defined in N.R.S. *§§* 432B.070, 432B.090, 432B.100, 432B.110 and 432B.140.

Adjudicatory Plea Hearing: A hearing that occurs within 30 days after the District Attorney files a Petition – Abuse/Neglect, where the mother/father of the child alleged to be the subject of abuse or neglect either admits, denies, or does not contest the factual allegations in the Petition.

Adjudicatory Trial: If the parents deny the allegations in the Petition filed by the District Attorney, an adjudicatory trial will be held. If the parents do not appear, the District Attorney will make an offer of proof regarding the allegations. If the parents appear, the District Attorney must prove the allegations by a preponderance of the evidence. The court will record its findings of fact and proceed to order a further hearing to dispose of the case. N.R.S. *§* 432B.530

Adoption and Safe Families Act (ASFA): ASFA (42 U.S.C. § 671, *et seq*.) was passed by Congress in 1997 in order to assure the health and safety of children and to promote permanent homes for children. ASFA requires, among other things, that children who are removed from the care of their parents either be returned to them or placed in an alternative permanent placement within one year from the date they are taken into protective custody. ASFA mandates that caseworkers plan concurrently to return the child home and to place the child in an alternative permanent placement. ASFA mandates that safety of children be the paramount concern in all decisions concerning placement. These federal mandates were enacted in Nevada and are set forth in Chapter 432B of N.R.S.

Alternate Plan: An alternate plan is a plan made in case a child cannot be safely returned to his parents. Families, relatives, foster parents, attorneys for the parents or for the child, or others in the community, may help develop the plan. The alternate plan may be adoption, permanent placement with a relative, guardianship, or permanent foster care. If an alternate plan becomes the goal for a child, the court must approve that plan.

Basic Skills Training (BST): A BST Worker offers services in the community or home setting. These services include, but are not limited to, social skills, problem solving, basic living skills, personal safety, self-care, organizational skills, time management, and transitional living skills.

Case Plan: A case plan is a plan approved by the court that outlines the minimum tasks a parent or guardian must complete before a child will be returned to their care. It is a "working document," which may change periodically during the course of a dependency case, with each change requiring court approval. It may include evaluations of the parents and the child, completion of counseling sessions, and maintaining stable employment or housing, among other things. Contrary to widespread belief**, successful completion of the case plan does not guarantee that a child will be returned to a parent or guardian**. In addition, it's possible that a child may be returned home before completion of a case plan if there are no current risks.

Chafee Funds*:* A client over age 14 may apply for Chafee funds to pay for expenses such as driver's license fees, graduation pictures and announcements, or other necessities (up to $750 annually – depending upon the age of the child).

Child Abuse and Neglect Reporting System (CANS): Refers to the Child Abuse and Neglect Screening which consists of a thorough search of the UNITY system for information on any reports and/or investigations pursuant to NRS 432B.

Child Abuse, Prevention and Treatment Act (CAPTA*)*: CAPTA (42 U.S.C. § 5101, *et seq.*), first passed in 1974, set standards for the definition of child abuse and neglect and provided assistance to states to develop child abuse and neglect identification and prevention programs. Subsequent CAPTA amendments required states to implement protective systems to respond to reports of medical neglect, establish comprehensive adoption assistance programs, and expedite termination of parental rights in certain

cases, among other things. These federal mandates were enacted in Nevada and are set forth in Chapter 432B of N.R.S.

Child and Family Team (CFT): A team that is comprised of family members, friends, foster parents, legal custodians, community specialists and other interested people identified by the family and agency who collaboratively develop a plan of care and protection to achieve child safety, child permanency, and child and family well-being.

Child Haven*:* A *temporary,* emergency residential facility for children who cannot remain safely in their home, a facility where children remain until they may return safely to their home, are placed with a relative, or are placed in a foster home. Child Haven is located at 701 N. Pecos Road, Las Vegas, Nevada (on the north end of the Clark County Family Court campus). The general telephone number for Child Haven is: (702) 455-5390.

Child Protective Services (CPS): CPS is the group within the Clark County Department of Family Services responsible for investigating allegations of child abuse or neglect; linking families to community services and providing guidance and supervision to families at risk of abuse and neglect; or, if it is not possible to keep a child safe in his home, taking a child into protective custody until appropriate permanent placement plans can be developed. The primary job of CPS caseworkers is to ensure the safety of children. The general telephone number for CPS is: (702) 455-5200.

Child Protective Services (CPS) Caseworker: This is the caseworker who responds to reports of child abuse or neglect, investigates the allegations, decides whether the child can remain safe in the home, with or without voluntary services, or whether the child should be removed and placed into protective custody. This investigative caseworker helps the Clark County District Attorney complete the Petition – Abuse/Neglect and prepares the Summary Report on the case for the Report & Disposition Hearing, which includes an initial case plan for the family and initial placement recommendation for the child.

Children's Attorneys Project (CAP): The Children's Attorneys Project of Legal Aid Center of Southern Nevada, Inc., represents abused and neglected children. Most clients are children in the custody of the child welfare agency and are usually referred to CAP by the Juvenile Division of the Family Court.

Court Appointed Special Advocate (CASA): A CASA is a volunteer member of the community who is appointed by the court to be a child's *guardian ad litem*, and represent and protect the best interests of the child in court proceedings. A Clark County CASA volunteer is supposed to receive 30 hours of training before being assigned to a case. N.R.S. *§* 432B.500 requires that the court appoint a *guardian ad litem* for the child after a petition alleging abuse or neglect has been filed. However, in practice, CASA's are not appointed in all cases in dependency court.

Department of Family Services (DFS): DFS is the Clark County agency formed in 2002 to be responsible for providing services for Clark County families, including: The Child

Abuse Hotline (responsible for accepting reports of abuse and neglect, 24/7); Child Protective Services, (*See*, Above); Child Haven and emergency shelter homes (*See*, Above); Children's Advocacy Center (a facility adjacent to Child Haven that provides a child-friendly setting to interview children about reports of child abuse, particularly sexual abuse, conducts medical exams and provides therapy); Parenting Project (a program to help parents have positive, healthy and nurturing relationships with their children); Foster Care Services (the program responsible for recruiting and training foster parents to meet the needs of children and the licensing of foster homes); and Adoption Services (the program responsible for recruiting adoptive parents who will provide an alternative, permanent home for children who cannot be reunited safely with their parents).

A child in protective custody may have contact with numerous caseworkers: the CPS caseworker who investigates allegations of abuse/neglect and prepares the Disposition Hearing Report and initial placement plan; the DFS caseworker who develops case plans to reunify a child with his parent(s) and alternative placements in the event reunification is not possible; and their substitutes or replacements. In addition, an Adoption Worker will be appointed to arrange the adoption of a child, if adoption becomes the permanent placement plan. The administrative offices for DFS are located at 121 S. Martin Luther King Boulevard, Las Vegas, Nevada 89106. The general telephone number is: (702) 455-5444.

Department of Family Services (DFS) Caseworker: This is the caseworker assigned after the CPS caseworker has investigated the case, caused the child to be placed in the County's custody and prepared the Disposition Hearing report developing the initial case plan and recommendations for placement. The DFS caseworker is primarily responsible for the day-to-day monitoring of the care your client receives during the term of his wardship, including the arrangement of foster care or other caretaker placement. This caseworker also prepares status reports for the court on the parents' progress in achieving their case plans.

Department of Juvenile Justice Services (DJJS): DJJS provides intervention services, guidance and control for youth ages 18 and under who are involved in delinquency and truancy. DJJS consists of four divisions: Clinical Services, Probation, Juvenile Detention, and the Spring Mountain Youth Camp.

Disposition Hearing: The stage of the juvenile court process in which, after finding that a child is in within jurisdiction of the court, the court determines who shall have custody and control of a child. The Disposition Hearing should occur within 15 working days after the Adjudicatory Plea Hearing or Adjudicatory Trial. The court will receive the DFS report and hear from the caseworker, the CASA (if one is appointed), and the attorneys for the child and parents, and make orders concerning the custody and placement of the child, what CPS, DFS and the parent(s) must do.

Disposition Report: If the court finds that the allegations of the Petition – Abuse/Neglect are true, the court will order DFS to submit a Disposition Report and Permanency Plan containing the following:

1) The conditions of the child's residence, the child's record in school, the mental, physical and social background of his family, the family's financial situation and other relevant matters, or if the child is a newborn delivered to a provider of emergency services, any matters relevant to the case; and
2) A plan to place the child in a safe setting as near to the residence of his parent(s) as is consistent with the best interests and special needs of the child. The plan must include:
    a. A description of the type, safety and appropriateness of the home or institution (consistent with N.R.S. § 432B.3905, limiting placement of children in child care institutions);
    b. A description of the services that will be provided to try to reunify the child with the parent(s) and alternative permanent placements that will be explored;
    c. A discussion of the appropriateness of the services that will be provided under the plan; and
    d. A description of how the plan will be carried out (pursuant to court order).

District Attorney (DA): The "D.A." is counsel to DFS and represents the agency at all abuse and neglect proceedings, from the initial protective custody hearing until the case closes and court jurisdiction terminates. The D.A. files all abuse and neglect petitions as well as motions to terminate parental rights ("TPR"). When legal issues about the case or caseworker arise, the D.A. handles them on behalf of DFS.

Division of Child and Family Services (DCFS): DCFS is a division of the Nevada Department of Health and Human Services, the state agency responsible for providing mental health services to residents of the State of Nevada. The general telephone number for DCFS is: (702) 486-7800.

Educational Training Voucher (ETV) funds: ETV funds can be used to pay for higher education for children who are in foster care or have aged out of foster care. It is also for children who have who were adopted from foster care on or after their sixteenth birthday. The money can be used at nearly all post-secondary education programs, including college, community college, culinary school, etc. Each child is entitled to $5,000 per year, paid directly to the educational institution. Information on ETV can be found at http://dcfs.nv.gov/Programs/CWS/IL/ETV/.

Fictive Kin: A person who is not related by blood but who has a significant emotional and positive relationship with the child.

Foster Mother, Foster Father (F/M, F/F): Foster mothers/fathers are the adults in the home where the County has placed a child in protective custody, who are not the relatives, natural parents, or adoptive parents of such child.

Indian Child Welfare Act (ICWA): ICWA determines the jurisdiction for Indian children or those eligible for tribal membership. ICWA gives Indian parents greater protections; allows Indian tribes to exercise control over, or have input into placement decisions;

proscribes the order of placement preference for Indian children; mandates compliance with extensive notice procedures; and requires social workers to provide an increased level of services. State court decisions may be invalidated for failure to follow these and other ICWA requirements.

Individualized Education Plan: An Individualized Education Program (IEP) is a written document, ideally developed in a collaborative and cooperative effort between parents and school personnel, which describes that abilities and needs of a child with a disability and prescribes that placement and service designed to meet the child's unique needs.

Interstate Compact on the Placement of Children (ICPC): ICPC is the agreement among the states to share information about the suitability of homes in their state as a placement location for a child in protective custody. ICPC signatory states agree to certain procedures and responsibilities regarding children in out-of-state placements. The receiving state upon approving a placement provides monthly reports to the worker of the sending state.

Juvenile Court: The Juvenile Court handles cases involving minors (anyone under the age of 18) who have been charged with violating the law or who are in need of supervision.

Natural Mother, Natural Father (N/M, N/F): Natural mothers and natural fathers are the birth parents of a child in protective custody.

Nevada Revised Statutes (NRS): The Nevada Revised Statutes are the codified laws of the State of Nevada. The Statutes are a compilation of all legislation passed by the Nevada Legislature during a particular Legislative Session and are organized by subject area into titles, chapters and sections. The Statutes can be found at https://www.leg.state.nv.us/nrs/. The Statutes are not immediately codified after each legislative session, so it is important to check the Nevada Legislature website to ensure that a particular statute has not been amended. The Nevada Legislature website can be found at https://www.leg.state.nv.us/.

Normalcy: Refers to age and developmentally-appropriate activities and experiences that allow children and youth to develop and grow in a nurturing and normal manner.

Permanency Plan: A Permanency Plan is a plan that sets out where a child in protective custody will live permanently, which could include natural parents, relatives, guardians, permanent foster parents, adoptive parents, or independent living for an older child. DFS must draft the plan and present it to the court for adoption by the court, at the Permanency Planning Hearing.

Permanency Planning Hearing: The Permanency Planning Hearing is a formal hearing held at the one year mark after a child is taken into protective custody, where the court will review the status of the case and reach a decision concerning the permanent plan for the child, of:

1. reunification with the parent or guardian;
2. termination of parental rights and adoption;
3. placement in a permanent guardianship (including a permanent foster
4. home or with a fit and willing relative); or
5. transition to independent living for children aged 16-1/2 or older.

Permanency Worker: This is a DFS caseworker who is responsible for preparing the court reports and other documents (Social Summary) necessary to effectuate the adoption of a child in protective custody.

Person Legally Responsible for the Psychiatric Care of the Child (PLR): A person appointed by the court to be legally responsible for the psychiatric care of the child, which includes the procurement and oversight of all psychiatric treatment, related care and provision of informed consent and approval to administer psychotropic medications.

Petition – Abuse/Neglect: A petition filed by the Clark County District Attorney, within 10 days after the Preliminary Protective Hearing, alleging facts of abuse or neglect sufficient to bring the child within the jurisdiction of the juvenile court (for protective custody). N.R.S. § 432B.490.

Placement: A placement is the location where a child in protective custody will live or is living.

Preliminary Protective Hearing: A hearing before a judge or hearing master that must occur within 72 hours after a child has been removed from his home, to determine if CPS made "reasonable efforts to prevent removal of a child" (as per the requirements of N.R.S. § 432B.490) and decide if there is reasonable cause to believe that the child may be at risk of harm if released from protective custody.

Psychosocial Rehabilitation Skills (PSR): A PSR Worker offers services in the community or home setting. These services include, but are not limited to, behavioral management, social skills, problem identification and resolution, effective communication, moral guidelines and judgment, and life goals.

Reasonable and Prudent Parent Standard: The standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interests.

Reunification: Reunification is the return of a child to the home and care of the parent(s), caretaker or guardian from whom he was removed and placed into protective custody.

Review Hearing: A Review Hearing is formal hearing that occurs every six months, after the Disposition Hearing, to review the child's status and the progress made to achieve a permanent placement for the child.

Safety Intervention and Permanency System (SIPS): A model implemented by the Department of Family Services that focuses on safety as the basis for the removal and return of a child.

Special Immigrant Juvenile Status (SIJS): A federal law that helps certain undocumented children and youth in the state juvenile system obtain lawful immigration status.

Status Hearing: A Status Hearing is a hearing ordered at the discretion of the court to review case status between the formal Review Hearings, usually, to deal with a specific issue presented in the case.

Subject Minor (S/M*)*: A minor child who is placed in protective custody - your client.

Supervised Contact/Visits: Contacts or visits between a child in protective custody and the parent(s) or other guardian from whose custody he was removed that are monitored by a caseworker or other adult.

Termination of Parental Rights (TPR): TPR involves the permanent severing of the parent-child relationship. The District Attorney will file a Motion to Terminate Parental Rights in Family Court asking the court to terminate all of a parent's rights to a child. If a parent opposes the Motion, there will be an evidentiary hearing, where the District Attorney must submit clear and convincing evidence that it is in the best interests of the child that his/her parents should no longer have any rights to him/her. (*See,* Chapter 128 of the Nevada Revised Statutes).

Therapeutic Foster Care: A foster home or group home that is supposed to be specially equipped to address the physical, mental, or emotional needs of a child in protective custody.

Unified Nevada Information Technology for Youth (UNITY): Nevada's statewide automated child welfare information system.

Wraparound in Nevada (WIN): WIN Workers are employed by DCFS and are assigned to cases where youth have mental health issues. They do targeted case management and ensure that the youth is wrapped in proper services. These workers hold CFT meetings on a monthly basis and visit the youth weekly.

CHAPTER TWO
A Child's Journey through Dependency Court

Introduction

The juvenile dependency court is comprised of three district court judges and three juvenile hearing masters. The cases are divided by geographic location and specialized units.

Hearing Masters issue findings of fact and recommendations which must be countersigned by a district court judge to become an order. Parties have the right to object to a hearing master's recommendations. Pursuant to Eighth Judicial District Rule 1.46, the party should make their intention to object on the record at the hearing. Once the written findings of fact and recommendations are received, the party has five days to file the written objection to the district court.

Each courtroom is staffed with a marshal. As a pro bono attorney, you should check in with the marshal and let him/her know that you are a pro bono attorney. This will enable you to get priority, recognizing that you are a volunteer and donating your time. Also, remember that the calendar is organized by the mother's name.

Steps Leading Up to Litigation

Before Clark County becomes involved with a family, someone must file a report of abuse or neglect. The report may be a tip on the Child Abuse Hotline, or a hold on a drug-exposed baby at the hospital. It could be a formal report submitted by a mandated reporter (N.R.S. § 432B.220), such as a teacher or hospital staff. Law enforcement may file a report if a parent is arrested and there is no one home to care for a child.

Nevada law requires that Child Protective Services (CPS) investigate reports of child abuse or neglect. If CPS believes a child has been abused, neglected, or is otherwise in need of protection, CPS has the authority to place the child into protective custody, petition the court for custody of the child or offer services to the family of the child. What CPS does depends on the circumstances of each family: the goal is to ensure the safety of children who have been reported as being abused or neglected and protect them from the risk of further harm.

Pre-litigation Investigation by Child Protective Services

When CPS receives a report of abuse or neglect of a child, the nature of the allegations and the age of the child are factors that determine how quickly an investigation is started. (Police may also investigate if the abuse or neglect involves criminal conduct.)

The CPS caseworker will gather information about the alleged abuse or neglect by interviewing the child's parent(s), guardian or other caretaker, siblings or other persons living in the child's home, and law enforcement, medical and school personnel, if necessary. The CPS caseworker will also interview the child and does not require the consent or presence of the parent or guardian to do so. CPS must determine if there is reasonable cause to believe that abuse or neglect has occurred and if so, who is responsible. As a result of this investigation, CPS will either substantiate the report of abuse or neglect, or determine the report is unsubstantiated. If the report of abuse or neglect is unsubstantiated, the case is closed and the family has no further involvement with CPS.

Protection without Removing the Child

Removing children from their homes can be even more traumatic than the underlying abuse or neglect and should be the last resort, even if the investigation substantiates the report. Until recently, however, deciding whether or not to remove was imprecise and largely subjective, too often based upon the attitude and experience of the decision maker. The same facts often produced wildly different outcomes for children and families.

To bring objectivity to the process, the Department of Family Services ("DFS") implemented a safety practice model. The Safety Intervention and Permanency System (SIPS) focuses on safety at the beginning and throughout the life of the case. SIPS presumes that children must not be removed unless CPS determines that leaving them in the home would render them "unsafe."

When determining whether or not a child is safe, there are three elements that should be considered:[1]

- Threats of Danger – a specific family situation or behavior, emotion, motive, perception or capacity of a family member that is (1) specific and observable; (2) out of control; (3) immediate or liable to happen soon; and (4) has severe consequences;
- Child Vulnerability – a child's ability to protect himself from threats; and
- Protective Capacities – the ability to protect one's child.

Children are considered "safe" when there are no present or impending threats of serious harm or there are sufficient caregiver protective capacities to prevent harm.[2]

By contrast, a child is unsafe if the following criteria are met:[3]

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[1] Therese Roe Lund, MSSW, National Resource Center for Child Protective Services & Jennifer Renne, J.D., National Resource Center on Legal and Judicial Issues, *Child Safety: A Guide for Judges and Attorneys,* American Bar Association, (2009).
[2] *See*, Appendix B – Nevada Safety Assessment.
[3] *Supra* n. 1.

- There is actual or threatened danger.
- The child is vulnerable to the danger or threatened danger (i.e., because of age or disability, the child is unable to protect himself/herself and depends on others)
- The caregivers are unable to protect the child from the danger. In CPS terminology, this is called "protective capacity."
- The danger or threat of danger cannot be mitigated or controlled even with a written safety plan.

It is important to remember that CPS sometimes confuses risk with safety. Risk refers to the likelihood of maltreatment occurring in the future.[4] The word risk is synonymous with words like chance, probability, or potential.[5] For a child to be considered unsafe, the consequences must be severe and imminent.[6]

Under the Adoption and Safe Families Act (ASFA), state child protection agencies are required to make reasonable efforts to keep children safe *in their homes*. An unsafe child does not automatically need to be removed from his home. CPS can work with the family to develop a plan to ensure the safety of the child without going to court. These safety plans can include in-home or out-of-home services. The family is not legally obligated to comply with the plan; however, if the family fails to comply, CPS can refer the matter to the Clark County District Attorney (DA). If the DA accepts the referral, a petition alleging abuse or neglect may be filed and a dependency case formally opened.

Practice Tip: These same criteria also determine when a removed child should go home. As previously mentioned, SIPS focuses on safety throughout the life of the case. "Why can't my client go home? Is my client safe? What can be done to make it safe for my client to return home?" are all appropriate questions to ask at every hearing. It is up to the caseworker to justify continued out of home placement based upon the criteria set forth above. If the caseworker cannot tell the court specifically how and why the child is still unsafe, ask the court for immediate reunification. Remember: reunification does not depend on parents completing court ordered services. Children can be safe at home while their parents complete their case plans.

Emergency Removal (N.R.S. § 432B.390)

If, as a result of its investigation, CPS finds that immediate removal is necessary to protect a child from the threat of further abuse or neglect, CPS may remove the child without the consent of the caretaker.[7] Emergency removal can occur at any time, even if the parents are cooperating with CPS. If there is not an emergency, DFS is required to obtain a warrant before removing a child. (*See*, *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784 (9th Cir. 2016)). DFS is beginning to comply with this requirement. The child is said to be

[4] Child and Family Services Reviews. Retrieved from https://training.cfsrportal.acf.hhs.gov/section-2-understanding-child-welfare-system/3015.
[5] *Id*.
[6] *Supra* n. 1.
[7] N.R.S. § 432B.390 (1)(a).

taken into "protective custody." If a child is taken into protective custody, he must be placed in the following order of priority[8]:

- In a hospital, if needed***;***
- With a relative, within the 5th degree of consanguinity, or a fictive kin (a person who is not related by blood but who has a significant emotional and positive relationship with the child.), who is suitable and able to provide proper care and guidance for the child, whether or not they reside in Nevada;
- In a licensed foster home;
- In any other licensed shelter that provides care to such children**.**

In determining whether a relative or fictive kin is suitable*,* CPS considers such factors as the conditions of the relative's home and the relative's criminal background, history of child abuse or neglect, substance abuse, ability and willingness to protect the child from his parent or guardian, and the level of cooperation with the case plan developed by CPS and the family. The judge or hearing master can overrule DFS if placement is denied. Whenever possible, children must be placed together with their siblings and must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.

Preliminary Protective Hearing (N.R.S. § 432B.470)

A hearing must be held within 72 hours of a child being placed into protective custody, excluding weekends and holidays. The purpose of the hearing, called the Preliminary Protective Hearing, is to determine if the child should remain in protective custody or if he can be released safely to return to his parents or other caretakers.[9] At the hearing, CPS will explain to the court why the child could not be left in the home safely and provide any other relevant information that the worker has learned in the course of his/her investigation. If the court decides that the child would remain at risk of harm if returned to his home, the child will remain in protective custody and the court will make written Findings & Order of Reasonable Efforts to Prevent Removal of Child (as required by ASFA). If the court does not make those findings, the child will be released to his family and the case will be closed.

While the child will seldom have an attorney representing him at this hearing, the court can refer the child for representation by a CAP attorney. Legal Aid Center is pushing to have more attorneys appear at this stage.

The court has the discretion to appoint counsel for the parents at the Preliminary Protective Hearing or the Adjudicatory Plea Hearing.

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[8] N.R.S. § 432B.390(6).
[9] N.R.S. § 432B.470 (1).

Adjudicatory Plea and Adjudicatory Trial Hearings (N.R.S. § 432B.530)

Adjudicatory Plea Hearing

If the court orders that a child be retained in protective custody, the Clark County District Attorney has 10 days to file a Petition – Abuse/Neglect (“”Petition). The Petition must specifically state the reasons the child was brought into custody.[10]

The Petition is presented to the court at this hearing and the parents have an opportunity to enter a plea. If the parents admit to the allegations in the Petition or plead no contest, the court may make a finding of neglect and return the child home before the Disposition Hearing, although usually, the child is kept in protective custody and the case proceeds.

There is a standing order in the 8th Judicial District that allows attorneys from the Children’s Attorneys Project to represent any child with an active family court case; representation is activated by filing a Notice of Appearance in the case.

Adjudicatory Trial

If the parents deny the allegations in the Petition, an Adjudicatory Trial will be set for another date. At the trial, the DA must prove the allegations of the Petition by a "preponderance" of evidence. At the conclusion of the Trial, the court grants or denies CPS continued protective custody over the child. If the Petition is denied, the child is returned to his parents and the case is closed. If the Petition is granted, the child remains in protective custody and the case proceeds to Disposition.

Dispositional Hearing (N.R.S. § 432B.530 and § 432B.540)

DFS has an obligation to make “reasonable efforts” to return your client to his family. The CPS caseworker will prepare a report for the court setting forth:

- the concerns for the child’s safety;
- the conditions of his home;
- the child’s progress in school;
- the mental, physical, and social background of the family and its financial situation;
- the parents’ progress with services arranged by CPS; and
- recommendations on where the child should live.

The caseworker will also submit a case plan, which details what the parents need to do in order for the child to return home (reunification). If your case is in this early stage of the proceedings, you may request a continuance to allow for a conference with your client

[10] N.R.S. § 432B.490; N.R.S. § 432B.510.

or, if you have already met your client, advocate for him, particularly in regards to interim placements and the requirements set out in the Case Plan. After all parties (parents, caseworkers, attorneys for parents and for the child) have been heard, the court will make a Disposition Order.

Following Disposition, a new caseworker is usually assigned to the child's case, with their primary responsibility being to monitor the day-to-day care of a child in protective custody, including placement, education, medical care, extra-curricular activities, etc. In addition, the caseworker will assist the parents in complying with their case plan objectives, explain problems noted in the report, discuss what services DFS will provide or recommends, and monitor the parents' progress. This caseworker arranges foster care or other caretaker placement while the child's case remains open and prepares periodic reports for the court on the parents' progress in satisfying the objectives and requirements of the Case Plan. Please be aware that a Nevada Supreme Court case has held that a non-offending parent is not required to comply with a case plan and accept services under N.R.S. § 432B.560 for purposes of reunification. (<u>*See*</u>, *In re Parental Rights as to A.G.*, 129 Nev. 125, 295 P.3d 589 (2013).

If your client does not want to return home, it is important to tell this to the court and the caseworker. Even if the caseworker is helping the parents try to reunite with your client, he or she is also supposed to develop a concurrent plan for placement, in the event that the attempts at family reunification fail. It is important for the DFS caseworker to know what alternative plans your client finds acceptable and to advocate strongly for that, if family reunification is not what your client wants or is unlikely to happen.

Also, you may file a motion to waive the requirement of "reasonable efforts" at reunification, especially if your client wants to be adopted, in hopes of speeding up the adoption process.

Review Hearing (N.R.S. § 432B.580)

Regardless of whether there are earlier hearings to check the status of a case, Nevada law requires that the court hold a formal Review Hearing six months after the initial removal to review progress and every 180 days thereafter. The purpose of these hearings is to inform the court if the parents are following through on the case plan and how your client is faring in his current placement. Based on your client's position, you can take this opportunity to request that the child be returned home, removed from home, or continue in the current out-of-home placement. These hearings are primarily to check on the welfare of the child, although the court will also inquire into the progress of the parents in completing any case plan and any alternative placement options being explored. **It is important that you are actively involved in these proceedings, to ensure that your client's needs are being met and to advocate for your client.**

The DFS caseworker will prepare a "Report for Permanency and Placement Review" for the court describing the progress that has been made toward reunifying the child with the parent and the "status" of your client. As the child's attorney, you will receive a copy of the Report and Permanency Plan prior to the Hearing. If your client has concerns about what is in the Report or if the Report contains factual inaccuracies about your client or the goals listed do not comply with your client's wishes, you should discuss your concerns with the DFS caseworker. If conversations with the DFS caseworker do not resolve your concerns, raise them with the court at the Hearing. You also need to keep the court informed about how your client is doing in school and/or home, what he wants in terms of permanency (i.e., live with a relative, remain in foster care, be adopted, etc.) and any other specific concerns your client may have**. It is important to have your client present in the courtroom during this Hearing and if, for any reason, your client is not present, you should ask the court for a continuance of the Hearing, so that he may be there** (unless your client refused to attend).

Regardless of what the parents are or are not doing, **you must represent the wishes of your client at this hearing.** If what he wants is something that you are certain the court will not do at the present time (for obvious safety reasons), you should still advocate for that outcome, if not now, then in the future, and work to make that happen.

Other Hearings

From time to time issues may arise that need the court's immediate attention. If it becomes necessary to address or advance your client's interests between scheduled Review Hearings, you may place the case on the court's calendar. The procedure for doing this varies depending on whether the issue is substantive (i.e., enjoining a change in placement or asking for a visitation order) or procedural (i.e., changing a scheduled review hearing date or inquiring on the status of a travel request). Procedural or minor matters that do not require the filing of a full-blown motion, can be brought before the court by filing a setting slip or Stipulation and Order (Stip & Order). A sample Stip & Order can be found in Appendix A of this manual.

If the issue is substantive, you must file a motion requesting the relief your client needs as well as a Motion for an Order Shortening Time for the hearing. When urgent issues arise, you need to protect your client's interests by bringing the issue before the court at an expedited hearing. Sample forms are found in Appendix A of this manual and at http://www.lacsnprobono.org/resources-and-training/childrens-attorneys-project/childrens-attorneys-project-sample-pleadings/.

Permanency Planning Hearing (N.R.S. § 432B.590)

Federal (ASFA) and state law require DFS to find a safe, appropriate and permanent home for any child placed into foster care, with a preference for reunifying a child with his

family if it is safe and appropriate. Once a child remains in substitute care for 12 continuous months (or 14 of the last 20 months), Nevada law states that the Court *must* determine a Permanency Plan for the child:

1. If the parent has made significant progress and it is safe and appropriate for the child to return home, the Permanency Plan will be reunification.
2. If the parent has not made significant progress and it is not safe and appropriate for the child to return home, the court will order a different plan such as termination of parental rights/adoption, permanent guardianship or independent living.

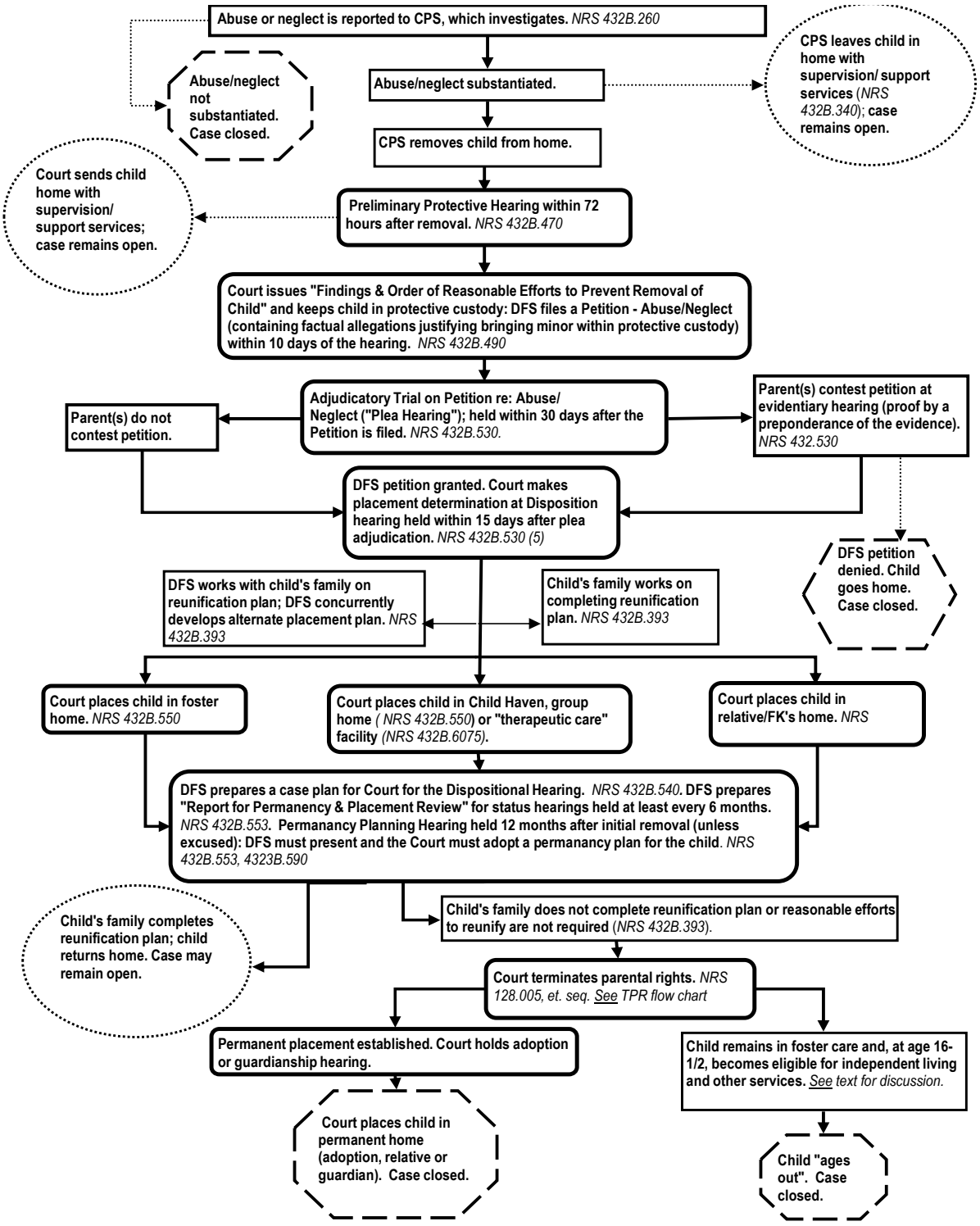
The goal underlying these time limits is to benefit children in protective custody by prohibiting practices that historically allowed children to languish in foster care for years. In practice, the stringent guidelines and mandated time lines often operate to the detriment of children. Decisions regarding permanent placements for a child may be made hastily, simply to comply with ASFA time requirements, rather than based upon what is in the best interests of a child.

ASFA contains exceptions to the twelve month requirement; for example, a Motion to Terminate Parental Rights does not need to be filed if the child is being cared for by a relative or if termination would not be in the best interests of the child. If your client does not want the rights of his parents to be terminated, you must oppose any attempt to commence the TPR process and ask the court to make a finding of "compelling circumstances" so that the ASFA/statutory timelines for termination are extended, and thus enjoin any attempt to terminate parental rights. (*See*, Chapter Six).

Reunification issues are among the most difficult that a children's attorney must confront. A parent may be fully complying with a Case Plan, and yet your client does not want to return home (he may be afraid of his parent). In these circumstances, if DFS is pushing for reunification and the court seems disposed to ordering this, you should consider asking the court to delay reunification and advocate for "trial home visits" for a day, a weekend, etc., and for family counseling for the parents and the child. On the other hand, if DFS decides the parents are not complying with the case plan and asks the DA to file a Motion to Terminate Parental Rights (Motion), you must strategize with your client on whether to support or oppose the Motion. If he wants to be adopted, you will support the DA's Motion; however, terminating parental rights when there is little prospect that adoptive parents will be found for the child creates a legal orphan and sets the child up to remain in long term foster care, without a permanent family. You must fully counsel your client on his choices and come up with a plan either to support the Motion or oppose the Motion and

recommend that services and reunification efforts continue. You should be aware, however, that a Nevada Supreme Court case has held that the absence of an adoptive resource does not bar the Court from terminating parental rights. (*See*, *In re Parental Rights as to A.J.G.*, 122 Nev. 1418, 148 P.3d 759 (2006).

ASFA, with its mandated time limits, can be used as a sword (to require a TPR when your client wants to be adopted) or as a shield (when termination is contrary to your client's wishes, you will argue that compelling circumstances exist which extend any federal or state time limits on the time to file a Motion). You and your client can determine how best to argue its provisions. If you have any questions or concerns about ASFA and its applicability in your case, feel free to contact your mentor at the Children's Attorneys Project for assistance and advice.


Abuse or neglect is reported to CPS, which investigates. NRS 432B.260
Abuse/neglect not substantiated. Case closed.
Abuse/neglect substantiated.
CPS leaves child in home with supervision/ support services (NRS 432B.340); case remains open.
CPS removes child from home.
Court sends child home with supervision/ support services; case remains open.
Preliminary Protective Hearing within 72 hours after removal. NRS 432B.470
Court issues "Findings & Order of Reasonable Efforts to Prevent Removal of Child" and keeps child in protective custody: DFS files a Petition - Abuse/Neglect (containing factual allegations justifying bringing minor within protective custody) within 10 days of the hearing. NRS 432B.490
Parent(s) do not contest petition.
Adjudicatory Trial on Petition re: Abuse/ Neglect ("Plea Hearing"); held within 30 days after the Petition is filed. NRS 432B.530.
Parent(s) contest petition at evidentiary hearing (proof by a preponderance of the evidence). NRS 432.530
DFS petition granted. Court makes placement determination at Disposition hearing held within 15 days after plea adjudication. NRS 432B.530 (5)
DFS petition denied. Child goes home. Case closed.
DFS works with child's family on reunification plan; DFS concurrently develops alternate placement plan. NRS 432B.393
Child's family works on completing reunification plan. NRS 432B.393
Court places child in foster home. NRS 432B.550
Court places child in Child Haven, group home (NRS 432B.550) or "therapeutic care" facility (NRS 432B.6075).
Court places child in relative/FK's home. NRS
DFS prepares a case plan for Court for the Dispositional Hearing. NRS 432B.540. DFS prepares "Report for Permanency & Placement Review" for status hearings held at least every 6 months. NRS 432B.553. Permanancy Planning Hearing held 12 months after initial removal (unless excused): DFS must present and the Court must adopt a permanancy plan for the child. NRS 432B.553, 4323B.590
Child's family completes reunification plan; child returns home. Case may remain open.
Child's family does not complete reunification plan or reasonable efforts to reunify are not required (NRS 432B.393).
Court terminates parental rights. NRS 128.005, et. seq. See TPR flow chart
Permanent placement established. Court holds adoption or guardianship hearing.
Child remains in foster care and, at age 16-1/2, becomes eligible for independent living and other services. See text for discussion.
Court places child in permanent home (adoption, relative or guardian). Case closed.
Child "ages out". Case closed.

CHAPTER THREE
The Lawyer's Role

Nevada Revised Statutes

Nevada statutes recognize the need for a lawyer to represent children and require the appointment of an attorney for a child in certain circumstances:

N.R.S. §432B.420:

> 2. A child who is alleged to have been abused or neglected shall be deemed to be a party to any proceedings under NRS 432B.410 to 432B.590, inclusive. The court *shall* appoint an attorney to represent the child. The child must be represented by an attorney at all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive. *The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings*. (emphasis added)

N.R.S. §128.100:

> 2. In any proceeding for the termination of parental rights to a child who has been placed outside of his or her home pursuant to chapter 432B of NRS, or any rehearing or appeal thereon, or any proceeding for restoring parental rights to such a child, the court *shall* appoint an attorney to represent the child as his or her counsel. The child shall be deemed to be a party to any proceeding described in this section and must be represented by an attorney at all stages of such proceedings. *The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings*. *(emphasis added).*

As a best practice, all children need a voice and an attorney to represent their rights. As such, we are working hard to provide an attorney for every child.

ABA Standards of Practice for Lawyers Who Represent Children

In 1996, the American Bar Association adopted Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases.[11] Under the Standards, the role of a child's attorney is to provide legal services for the child and to articulate the child's independent voice.[12] While the Standards acknowledge that in some states, some lawyers are required to function in the dual role of lawyer/guardian *ad litem,* it makes it clear that it is preferable that the lawyer appointed for a child act solely or primarily as a lawyer and seek the appointment of a separate guardian *ad litem* if it becomes

[11]American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Proceedings (the Standards), approved by the ABA House of Delegates, February 5, 1996, available at: http://www.americanbar.org/groups/child_law/tools_to_use.html [hereinafter ABA Standards].
[12] *Id.* at A-1.

necessary.[13] The Standards impose upon lawyers who represent children the same duties as those that apply in more traditional attorney - client relationships: namely, lawyers must competently and zealously advocate for their clients.[14] Lawyers have the same duty of confidentiality with child clients as they do with adult clients.[15]

Additionally, in 2011, the ABA adopted the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. The Model Act requires the appointment of a lawyer for every child and youth in abuse or neglect proceedings in which the state has removed the child from the home. The Model Act outlines a set of standards, duties and mechanisms that states can put in place to ensure the provision of high-quality, effective lawyering for children. (*See*, Appendix B).

The Lawyer's Role in Practice

The ABA Standards of practice make clear that the role of a lawyer for children is very much the same as the role of a lawyer for adults. In practice, there may be a few differences relating to a client's age that may present issues unique to children, but there are not many differences in the scope of representation. Lawyers for children, like lawyers for adults, zealously represent their client's wishes. Lawyers for children are bound by the duty of confidentiality. Lawyers for children, like lawyers for adults, have a duty to advise and counsel their clients. Lawyers for children should offer an assessment of the likelihood of success on a course of action, and make sure that the client fully understands the possible ramifications of his or her chosen course of action. There are, however, some fundamental differences.

When adults hire lawyers it is usually because a specific legal issue has arisen that needs to be resolved. Adults understand that meetings with the lawyer are for the purpose of discussing that specific legal issue. Children, on the other hand, often don't know the legal issues presented or don't want to talk about them with someone they don't know. Therefore, a lawyer has two challenges: first, you must inform your client of the legal issues presented in his case; and second, you must encourage the client to direct you toward a specific course of action. Children need to develop a relationship with their lawyer before they can give legal direction. Therefore, you will need to encourage your client to talk about his everyday life and should not be discouraged if a meeting, or a large part of one, goes by without any legal issues being discussed.

When adults hire lawyers for a particular legal case, the lawyer and the client may develop a relationship and choose to work together on other or subsequent legal matters, but that is not always the case. When a lawyer begins representation of an abused or neglected child, the scope of the legal issues presented may not be clearly defined. A lawyer for an abused or neglected child must be prepared to handle multiple legal issues: you may

[13] *ABA Standards, supra* n. 11 at A-2.
[14] *ABA Standards, supra* n. 11. at B-1.
[15] *ABA Standards, supra* n. 11.

have to deal with issues relating to sibling visitation, placement, delinquency, education, medication, estates and religion, all in a single case. Your mentor at the Children's Attorneys Project can help with any issue that may arise in your case, and can provide suggestions and form exemplars to deal with it.

CHAPTER FOUR
The Lawyer's Duties

Interview Your Client

Where?

Lawyers for children should meet their clients in their most natural environment. The first meeting with your client should take place where he is living. Ideally, the in-home meeting should occur when the current caretaker is home but in another room. This serves a dual purpose. First, it helps put your client at ease. Second, you can gain information about your client and his environment that may not be available or accessible in your office. Information gained in the home may be used to address your client's legal issues, or help develop rapport with your client. It is always preferable to meet a client at his current home, but subsequent meetings may be held at school or another place that both of you think is appropriate. Regardless of where you meet your client, you should always make sure that you can talk to him freely, outside the presence of others. Attorney-client privilege will attach to all communications between you and your client unless the presence of a third party at that communication somehow waives the privilege.

When?

You should meet your client as soon as possible after his case is assigned to you. Lawyers need to be especially sensitive to a child's schedule. Many meetings will take place after school and during extra-curricular activity hours. Lawyers should take care that meetings are not seen by the interim caretaker or the child as yet another burden. Parents and foster parents can be overwhelmed with the number of appointments that must be kept to comply with court-ordered Case Plans. Sometimes meetings must be scheduled around caretakers' schedules. You do not want to add to your client's stress by placing him in a situation where he can be blamed by the caretaker for the inconvenience of your meetings.

How often?

You should see your client as often as you feel it is necessary. A good rule of thumb is to see the client once a month when everything is going well. You should also visit the client any time there is a change in his placement and before any hearings in his case. You should also see him if problems arise with school or his current placement or if your client specifically asks to see you.

Determine Your Client's Interests

Most children have never had a lawyer. Many children do not know why they have a lawyer, what a lawyer is, or what a lawyer does. You should explain to your client why he has a lawyer and what it is that you will do for him in a way the child can understand. You will need to explain, albeit somewhat simply, the legal process and court proceedings and explain your duty to him of loyalty and confidentiality. It is important that your client understands that the court will expect you to explain what your client wants and that it is your responsibility to disclose what he wants to have happen in his case and in his life. We have a book that can be given to a child to explain the process – please ask for it if you have not received one.

Sometimes children think that they have a lawyer because they have done something wrong. Some think that someone wants to sue them. If the child is in a restrictive therapeutic facility like Desert Willow, they may think that they are in jail. You should explain to your child that none of this is true. Your client should know that you were brought into his case because someone thinks that he should have your independent voice, arguing for his wants and needs. Additionally, children often think that the reason CPS is involved with their family is because of something that they did. Caseworkers sometimes forget to tell children that this isn't true – it can be very important for your client that you reassure him that he did nothing wrong.

A lawyer for children also needs to make it clear that the lawyer represents only the child. The child is usually surrounded by various adults: caseworkers, therapists, CASAs, parents, lawyers for the parents or foster parents, and sometimes police or probation officers. These people often have the difficult job of advocating for the child, or for the parents or for some other interest. Your client needs to understand that your job is to be his voice and that you will interact with these adults on his behalf. Whatever he tells you, you will not judge or scold him for anything that he has said or done in the past.[16] It is important to let him know that he is able to dictate how the representation goes: he is the boss, not his caretakers and not you. At the same time, you need to make clear that you are there only to address legal issues. You should not, and will not, advocate on his behalf to get out of doing homework or household duties, for example.

As with any other client, you have a duty to counsel your client. Lawyers for children must counsel their clients about the legal system, their rights, and the probable consequences

[16] Once a child has a clear understanding of his lawyer's role, it is not uncommon for the child to tell the lawyer things he hasn't expressed to anyone else previously, or tell the lawyer that his wishes are different than what he stated to someone else. This does not mean that the client is lying or trying to manipulate the lawyer. Most often, it simply means that he trusts his lawyer with the truth, as he sees it.

of their choices. The lawyer must also educate the client about different placement opportunities, services, and educational options that may be available to him on request.

Mandatory Reporting Rules and Exceptions

The role of attorneys representing children is also further complicated because Nevada is one of a handful of states which applies "mandatory reporting requirements" to attorneys. Under N.R.S.§ 432B.220, attorneys who, in their professional capacities, know or have reasonable cause to believe that a child has been abused or neglected must report the abuse or neglect within 24 hours to a child welfare or law enforcement agency. A knowingly and willful violation is a misdemeanor.

N.R.S. § 432B.220 was originally enacted in 1985, long before attorneys were provided to these children. In recognition of that unique role, the 2013 Nevada Legislature passed AB 155 (Sec.1.7) – codified in N.R.S. § 432B.225 – which created an exception to the requirement that attorneys are mandatory reporters where:

- An attorney represents a child; and
- The attorney acquires the knowledge of the abuse or neglect from the client during a privileged communication (written or verbal communication from the client as opposed to the observation of bruises, etc.); and
- The client (not siblings or others) is the victim of the abuse or neglect; and
- The client is in foster care; and
- The client does not give the attorney consent to report the abuse or neglect.

Note that this exception to the mandatory reporting requirement is quite narrow. The knowledge first must be acquired during a "privileged communication". Lawyer and client privilege is governed by N.R.S. §§ 49.035- 49.115. Generally the client may refuse to disclose and prevent the disclosure of confidential information provided by the client (or through the client's representative) to the attorney (or the attorneys representative). Knowledge obtained by observing the child's physical condition or obtained from sources other than the child's words or writing falls outside the exception.

Nevada Rules of Professional Conduct Rule 1.6 does provide a few exceptions to the general rule that confidential information may not be disclosed. An attorney may reveal otherwise confidential information with the informed consent of the client, if the attorney believes disclosure is necessary to prevent reasonably certain death or substantial bodily harm or to comply with a court order or statute.

Moreover, under N.R.S. § 432B.225, the child must be the victim in order for the exception to apply. For example, if the client is reporting the abuse or neglect of siblings the attorney is required to report. Finally, the child must "be in foster care". If the child is then placed in other settings then even privileged communication is reportable.

N.R.S. § 432B.225 also notes that while such attorneys are not required to report to authorities within 24 hours, they are not excused from the ethical obligation to take

reasonably necessary actions to protect the child if the child is not capable of making adequately considered decisions because of age, mental impairment or any other reason. Such actions may include, without limitation, consulting with other persons who may take actions to protect the client and, when appropriate, seeking the appointment of a guardian *ad litem*, conservator or guardian.

These ethical obligations flow from Nevada Rules of Professional Conduct 1.14. The rule indicates that while as much as possible a lawyer shall attempt to maintain a normal attorney-client relationship with a person of diminished capacity, when the lawyer reasonably believes that the client is at risk of substantial harm unless action is taken and the child cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including the examples in N.R.S. § 432B.225. Under such circumstances, the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Practice Tip: At the first interview, or as soon as possible thereafter, explain privilege, confidentiality and mandatory reporting to the child. For example you might say something like this; "I am your lawyer and that means I keep your secrets. If you never want to see your mother again, and don't want me to tell anyone you said that, I will not tell anyone. If you love your brother more than anything, and want to live with them, but don't want me to tell anyone you said that, I won't. I will always talk to you honestly about the process and the likelihood of whether what you want will happen. I will fight for you– to stay where you want; to go to the school you want; to be placed where you want if your first choice isn't possible, etc. The only time that I have to tell someone what you said is if you tell me someone is hurting you badly, hurting you sexually or beating you severely. If that happens, first, I will tell you…then I will report it….and I will work with you every step of the way on how to deal with it. You should know that you can always call or text me if something goes wrong, and I will fight as hard as I can to make sure you are not lost in this system."

Soliciting and Taking Direction from Your Child Client

Lawyers for children are appointed to represent the child's legal interests. Obviously, these interests will include basic things such as food, shelter, and education. However, there are many other issues that frequently need to be addressed, such as sibling and parent visitation, counseling services, placement, and recreational services.[17] The lawyer's job is to advocate for your client's wishes, even when it might seem that the position is not in the child's best interests.

The ABA Standards reject the idea that children are unable to make choices and direct their lawyer. The ABA Standards rely on general knowledge and psychological studies about competency and recognize that child clients may be able to direct their lawyers about all issues at all times, or may be able to direct their lawyers about some issues only

[17] *ABA Standards, supra* n. 11 at B-5, C-4(1)-(2).

some of the time. The duty of the lawyer is to elicit the child's preferences and represent them throughout the litigation.[18]

In determining your client's preferences, you must advise your client of the facts and laws surrounding his case. You must also advise him of the legal ramifications of various possible choices and the likelihood of achieving any particular choice, if you can determine it. You can also offer your client your assessment of the case and inform him what you think may be a reasonable course of action. However, you need to be alert to your ability to influence him and avoid exerting too much influence on him so that he substitutes your judgment for his genuine preference.

So you will need to remain aware of your client's age and level of maturity and consider how that may affect his ability to understand what you are talking about. It is unlikely that he will understand legal concepts or complex words, even those that may seem obvious to you. For example, when discussing visitation with your client, you would probably not call it "visitation" or talk about "siblings", but rather ask whether he would like to see his brothers, sisters or parents and if so, how often?

Conflicts arising while your client is in foster care can present their own set of problems. You may sense that your client is having problems but he won't discuss what they are. He may be reluctant to talk to you about problems with his foster care placement because he fears that if you repeat something he says to you to the court, nothing will be done and he will be returned to his foster parents to face their retaliation. You can try to address your client's concerns by asking him if he wants to stay where he is. If the answer is no, ask him why and tell him that you will not repeat anything he tells you about his foster parents to the court or to his caseworker unless you are certain he will be removed from their care. Your primary concern is not to make his present situation any worse than it is already.

What To Do If Your Client's Direction Appears Harmful

What if your client, instead of deferring to your advice, insists on a course of action that, in your view, is not in his best interest? In such a case, the ABA Standards do not permit you, purely on that basis, to withdraw from representation or to request appointment of a guardian ad litem. Although it is possible in these circumstances to request appointment of a separate guardian ad litem, it is a highly disfavored choice. Moreover, if the substantial danger to your client is revealed to you in a confidential disclosure, the mere appointment of a guardian ad litem may not adequately protect your client.

It is hard for any lawyer to allow a client to embark on a course of action that is likely to result in serious injury or death without any intervention, and doubly hard if the client is a child. If you confront a situation where your client insists on what you deem to be a clearly

[18] *ABA Standards, supra* n. 11 at B-3, B-4.

harmful course of action, you should consult with your mentor at the Children's Attorneys Project to get their opinion on the level of harm inherent in the client's choice and an evaluation of the likelihood that the danger would be obvious to others (such as DFS or the DA) who will provide input in the case. Your mentor can assist you with deciding on the best course of action in your case. **Deciding how to proceed under these circumstances is not a decision you should make alone.**

Counseling Your Client

Among any lawyer's basic obligation to a client is to counsel him concerning the subject matter of the litigation, the client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process. As part of this counseling function, the lawyer may express his or her assessment of the case, the best position for the client to take, and the reasons underlying the recommendation. The attorney may counsel against the pursuit of a particular position sought by the client. When your client is a child, such counseling requires particular subtlety and sensitivity. Children are often intimidated and manipulated by adults. Your client may be more susceptible to domination by you because of "the power dynamics inherent in adult/child relationships." Therefore, you need to ensure that the decision he ultimately makes reflects his actual position.

Become Informed

Be aware of the facts surrounding your client's removal from home. Become familiar with the circumstances under which your client was taken from his home. Find out the details of the family's prior contacts with Child Protective Services, if any, who made the decision to remove your client from his home, and the basis for that removal, including:

1. The specific behavior, event or circumstances that put the child at risk of harm and justified removal;
2. How family problems are causing or contributing to the risk; and
3. What services CPS, DFS and/or DCFS (mental health) have provided and will provide for the family to alleviate or diminish the risk and what alternatives, including in-home services and placement with relatives, were considered prior to removal?

The Abuse/Neglect Petition filed by the District Attorney's office will provide some of this information. The CPS and/or DFS caseworker should be able to provide more information.

Inquire about reunification efforts.

What efforts have been made, to this point, to reunify the family? A call to the DFS caseworker could provide this information. Is a visitation schedule in place for your client and his parents? His siblings? Are they in the same placement location or has the family

been split up? If so, why? Are there alternatives to foster care such as kinship care? What relatives have been contacted to see if they can assume custody of the family? What other reunification services have been provided – i.e., homemaker services, child or respite care, family counseling, substance abuse counseling, domestic violence counseling, anger management counseling, etc.? If necessary, you can subpoena the caseworker's records or ask the court to order that they be disclosed.

Determine Your Client's Goals and Concerns about Placement

You need to explain to your client what will happen at various points throughout the legal case and find out his view of his current placement and what he would like to see happen at the Permanency Planning Hearing: that is, what is his goal for permanent placement? If his goal is to return home, you will need to figure out whether that is a viable option for the court, what needs to happen to lean the court in that direction, and then actively advocate for the necessary services to get to that place – who is available to provide them, where, who will bear the cost, if any, of the service, what is the time frame attached to "completing" the service? Has your client been home on overnight visits? Weekend visits? How did those go? If there are siblings, did they go home at the same time? Why or why not? Make DFS present evidence on the record of all efforts made or attempted to keep the child in his home and be prepared to introduce evidence of the unreasonableness of DFS' efforts (what alternative efforts or placements could have been made).

If his goal is adoption, you should be prepared to support the DFS Motion to Terminate Parental Rights, as the first, necessary step toward that end. If he wants to continue visits with his family after the adoption, you will need to get a visitation order in place before the termination order is signed and before an adoption is completed. If his goal is to transition to independent living (and he is the appropriate age – between 16 and 17) you should work closely with the DFS caseworker to get him independent living training/services.

Your client needs to know that there is a secure end to this upheaval in his life and that you will help him get there. You must advocate for the permanent resolution your client wants. You must ensure that DFS is making reasonable efforts to timely place your client in a permanent placement, including:

1. Ensuring that your client's family is receiving the necessary services that will lead to reunification, if that is consistent with your client's wishes;
2. Ensuring that concurrent placement options are being explored even if family reunification efforts are continuing, if that is consistent with your client's wishes;
3. Ensuring the timely filing of termination of parental rights, if that is consistent with your client's wishes; and

4. Ensuring that an Adoption Worker is assigned after a TPR, if that is consistent with your client's wishes.

Conducting Discovery, Filing Motions and Getting Court Orders

To competently represent and counsel your client, you must have "the big picture" and a clear end game in sight. This requires your thorough, independent review of your client's situation, which may require talking to police, caseworkers, CASAs, teachers, parents, therapists, and anyone else who has significant contact with your client. You have a right to review all documents submitted to the court, including any delinquency files that involve your client. Child clients frequently have siblings who are involved in abuse and neglect proceedings or parents who grew up in foster care. These records also can provide information and insight for the lawyer and should be made available to you.

N.R.S. § 432B.420 (2) provides: A child who is alleged to have been abused or neglected shall be deemed to be a party to any proceedings under NRS 432B.410 to 432B.590, inclusive. The court shall appoint an attorney to represent the child. The child must be represented by an attorney at all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive. *The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings*." Therefore, you may conduct discovery, file motions, appear in court, and perform all other functions of attorneys acting on behalf of clients.

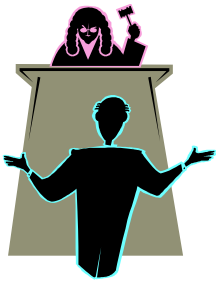
Family Court proceedings are often informal and child dependency proceedings are no exception. Nevertheless, you may need to engage in discovery, particularly if your client has education or mental health issues that need to be resolved.

Much of the advocacy performed by attorneys is oral rather than written. However, lawyers for children can and should file motions when necessary. Specifically, you may find it necessary to file Motions to Enjoin a Change in Placement or to Enforce Court Orders, among other things.

It is important to get a court order for the services your client wants and needs, because otherwise you cannot force DFS or DCFS to provide them. Be prepared for the need to file an Order to Show Cause when DFS or DCFS do not or cannot comply with an order (i.e., visitation with parents or siblings, change in placement by x date, provision of goods or services by y date, etc.). If the matter is of importance to your client, get it memorialized in a court order. Otherwise, going to court over minor issues can often be avoided with a call to a caseworker or a parent's lawyer.

Appear in Court

You must appear at all hearings involving issues related to your client. You should expect to fully participate in all hearings and advocate for your client.



You must represent your client's wishes as you would represent the wishes of any of your adult or corporate clients. This is true even when you do not agree with him and even when you think that his expressed preference is not in his best interests. You are free, however, to counsel the child and explore other acceptable alternatives.

Preserve Your Independence

It is important that your client understand that you are there only for him. He needs to know that he is the focus of your visits. You should not appear too friendly with natural parents, foster parents, therapists or caseworkers if your client feels those people are opposing his interests or otherwise are "against" him.[19]

Other *Proceedings*

Your role as a CAP attorney in other proceedings is subject to the exercise of your judgment and discretion.

When Your Client Is Involved in a Criminal Proceeding as Victim, Witness, or Defendant

It is important to remember that defense attorneys and prosecutors are often unaware of or don't consider that a child has an attorney in child protection proceedings --especially where the criminal case is unrelated to the abuse/neglect/dependency case. It is, therefore, essential to let them know, from the beginning, that your client has an attorney and to discuss the role that you would like to play in the criminal proceedings. When a parent is charged with a crime arising from the same actions alleged in an abuse or neglect petition, you should inform defense attorneys, parent's attorneys, prosecutors, and other attorneys that you represent the child and that you must be present before they may talk to your client.

When Your Client Is Petitioned as a Delinquent (Juvenile Delinquency)

Your client may be arrested or have a concurrent delinquency case pending in Juvenile Court. In Nevada, children age eight and above can be adjudicated a juvenile delinquent. A complaint or charge begins the process through which the youth may be adjudicated a delinquent. Youth may be referred to the court through complaints or charges from law enforcement, school resource officers, parents, or other citizens. Generally, your client will have a juvenile public defender appointed to represent him. You are encouraged to attend all hearings (e.g., Detention, Plea, Adjudicatory, and Disposition) with the purpose of "reminding" the court that your client is a victim of abuse or neglect, and that the service options within the dependency system are broader than those within juvenile justice, to see whether he or she will refer the behavioral issues to the dependency judge for

[19] Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions, 62, Lexis Law Publishing, 1997.

handling.

Although attorneys from the Children's Attorneys Project do not usually act as lead counsel when attending the hearings on these matters, you can contact the child's defense attorney and the district attorney to find out more about the case and, under proper court authority, can share information about the child that might be helpful in achieving a satisfactory outcome for your client. CAP attorneys are civil attorneys and do not defend their clients regarding the charges themselves. It is critical that your client knows ahead of time that you intend to do this, and to consult with him regarding his wishes on this matter. Furthermore, subject to your client's wishes and his constitutional right to counsel of his own choosing, you (as a private Pro Bono attorney) may choose to act as sole counsel for your client in the juvenile justice proceeding. Either way, it is important that your client knows that you are there to support him through the entire delinquency process.

CHAPTER FIVE
Permanency

Case Planning

Before ASFA was passed in 1997, caseworkers focused their efforts primarily on reunifying children with their families. Limits on the length of time that could be spent working with a family varied from state to state and were enforced only sporadically. In some states, children remained in foster care for years, sometimes their entire childhood, moving from place to place and family to family. ASFA provides uniform guidelines, stringent timelines, and a clearly articulated intent. As before, workers must make reasonable efforts to keep a child in his home or to return him home if he has been removed.[20] What has changed is that ASFA now has "teeth" in the form of the granting or withholding federal funds, to encourage states to adopt and enforce "best practices".

Despite its admirable goals, ASFA has created as many problems as it has resolved. Under ASFA, even if a caseworker is working with the family to make the family and home safe for the return of the child, he or she must simultaneously plan for the possibility that the home or family may never be safe for the return of the child.[21] This is called concurrent planning and is required by ASFA. Therefore, the caseworker is supposed to make reasonable efforts to place a child up for adoption or with a legal guardian at the same time that he or she is making efforts to reunify the family.[22] In practice, this may not occur.

On September 29, 2015, a federal law affecting "permanency" went into effect. The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183/H.R. 4980), eliminated Other Planned Permanent Living Arrangement (OPPLA) as a permanency option for a child under the age of 16. OPPLA is also referred to as Another Planned Permanent Living Arrangement (APPLA). Furthermore, this law added additional case plan and case review requirements for older youth who have OPPLA as a permanency goal. Section 113 of the Act, requires that youth in foster care, ages 14 and older, be allowed to: help develop their own case plans, make revisions to their case plans, and select two people, who are not foster parents or caseworkers, to be part of their planning team. DFS may reject either of these individuals if it is believed that they would not act in the best interest of the child. The case plan for all children, ages 14 and older, must include a written "list of rights" document outlining the child's rights as they pertain to education, health care, visitation, court hearings/participation, and the right to stay safe. The youth must sign off that they received this document and that it was explained to them in an age appropriate manner.

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[20] 42 U.S.C. § 671 (15)(B).
[21] *Id*. at (15)(F).
[22] *Id*.

For your purposes, it is best to view case planning with your client's end goal in mind. When DFS develops a Permanency Plan for your client, you must make certain that the caseworker knows what your client wants and that your client was involved in the plan development. The Plan should be developed with the best interests of the child in mind and must include a completion date.[23] You should review the Permanency Plan with your client before it is submitted to the court and if your client objects to the Plan, you should make recommendations about the Plan and put your objections and recommendations on the record at the Review Hearing.

In certain circumstances, consistent with your client's wishes, you may file, or join the DA in filing, a Motion to Waive Reasonable Efforts at Reunification. Sometimes, the DA will file a motion to waive these efforts, usually in cases where particularly egregious facts exist. Ordinarily, however, the DA does not file anything and the case will bumble along (often with your client being buffeted from one placement to another). Consequently, if your client wants to be adopted and your motion is granted, the case should be "fast-tracked" to filing the Termination of Parental Rights Motion. In this situation, you must ask the court to order a TPR Motion be filed. Since the process of finding a permanent placement for a child can be very lengthy and involved, you should not wait until after "reasonable efforts" to reunify the child are no longer necessary. A long delay before a permanent placement can be effectuated can be detrimental to children.

If your client agrees and the Permanency Plan is adoption, DFS must recruit adoptive families.[24] The court should check on the status of this recruitment at hearings held after the six month review and if not, you should inquire about efforts to find a permanent family for your client. Under the "reasonable efforts" standard of ASFA, recruitment efforts should be intensive and DFS should assign sufficient staff so the Home Study and the Social Summary can be completed and securing subsidies and services does not unduly delay the adoption.

Much more could be said about permanency for children. The main thing is to recognize that growing up without a sense of stability and permanency is detrimental to children and your client is counting on you to help him achieve stability in his young life.

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[23] Technical Assistance Bulletin, Judge's Guidebook on Adoption and Other Permanent Homes for Children, Permanency Planning for Child Department, Vol. III, No. 1, February 1999, National Council of Juvenile and Family Court Judges at 13 [hereinafter Judge's Guidebook].

[24] P.L. 105-89: Sec. 101(a)(C) 42 U.S.C. § 671 (a)(15)(A) et seq.

CHAPTER SIX
Termination of Parental Rights

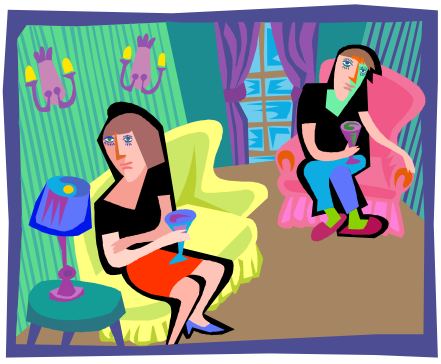
The TPR process is set out in Chapters 128 and 432B of N.R.S. Whenever it appears that a child cannot or will not be reunited with his family, DFS should commence the termination process by asking the DA to file a Motion to Terminate Parental Rights. The statutes set forth the requirements for filing and serving the Motion: in addition to the parents, the motion and notice must be served upon the legal custodian or guardian; the attorney and any guardian ad litem for the child; any known relative of the child within the fifth degree of consanguinity who is residing in this state; if applicable, each Indian tribe of the child; and the State/County Child Support Enforcement agency.[25] N.R.S. 432B also requires the court to ensure that any prospective adoptive parent is also provided a copy of the notice.

As a practical matter, in dealing with cases where there is or will be a termination of parental rights, it is useful to refer to the legislative intent underlying Chapter 128:

1. The legislature declares that the preservation and strengthening of family life is a part of the public policy of this State.

2. The legislature finds that:

    a) Severance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination.
    b) Judicial selection of the person or agency to be entrusted with the custody and control of a child after such severance promotes the welfare of the parties and of this State.
    c) The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.



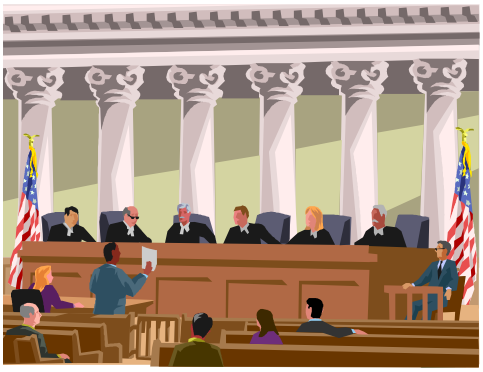
Consistent with this intent, at the evidentiary hearing on the Motion, the DA will have to establish that termination is in the best interests of the child, by clear and convincing evidence. (*See*, *In re Termination of Parental Rights as to N.J.,* 116 Nev. 790, 8 P.3d 126 (2000).

The parents will have special defense counsel appointed for them and DFS will be represented by the DA. The only way your client's voice will be heard is if you appear in the action to represent him.

[25] N.R.S. § 128.060; N.R.S. § 432B.5902.

As counsel for the child, you have all the rights of any other party to this proceeding: "In any proceeding for the termination of parental rights to a child who has been placed outside of his or her home pursuant to chapter 432B of N.R.S., or any rehearing or appeal thereon, or any proceeding for restoring parental rights to such a child, the court shall appoint an attorney to represent the child as his or her counsel. The child shall be deemed to be a party to any proceeding described in this section and must be represented by an attorney at all stages of such proceedings. The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings."[26] You may ask questions and offer evidence and witnesses of your own, in pursuit of your client's interests.

Finally, whether you are allied with the DA or the parents, depends upon your client. If he doesn't want his parents' rights terminated, you need to oppose the termination of parental rights (citing the Statute and the ASFA exception where termination is inappropriate if it is not in the best interests of the child). If he wants to be adopted, you will align with the DA.[27]

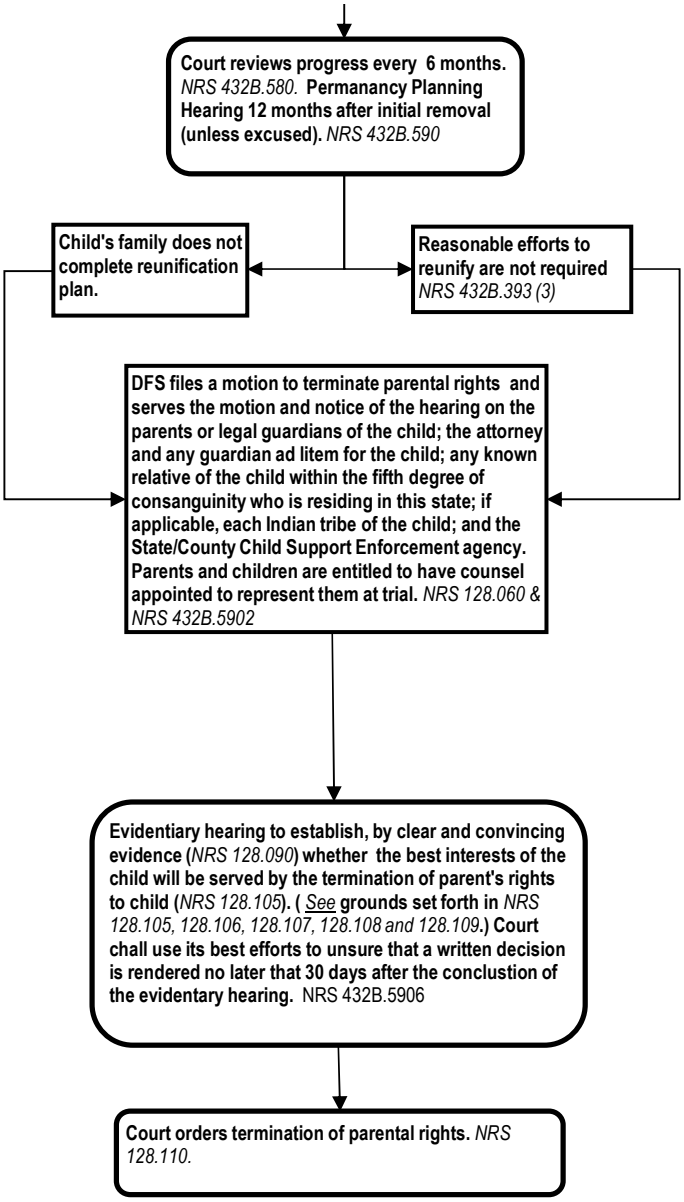


If the court grants the Motion to Terminate Parental Rights, the parent(s) may appeal this decision to the Nevada Supreme Court.[28] Should the parents elect to appeal the decision, any pending adoption of the child may be delayed. If the parents do not appeal the decision, the child will be available for adoption. In the event that the Motion is denied, the parents typically will be given more time to complete their case plan. The Motion may be re-filed at a later date if the parents still do not substantially comply with their case plan.

An important side issue to consider at the Termination of Parental Rights stage is the issue of sibling visitation. Sometimes, the Permanency Plan is adoption for only one of a pair (or more) of siblings by an adoptive couple. If this applies to your client and your client wants to maintain contact with his siblings after their (or his) adoption, you should file a Motion for Sibling Visitation on behalf of your client. (*See*, N.R.S. § 432B.580 (2)(b)(4)(II)). The Motion should be filed with the court **before** the Motion to Terminate Parental Rights is granted. See www.lacsnprobono.org/resources-and-training/childrens-attorneys-project/childrens-attorneys-project-sample-pleadings/ for samples or contact your mentor.

[26] N.R.S. § 128.100.
[27] N.R.S. § 432B.5906 requires the Court to use its best efforts to ensure that a final written decision on a Termination of Parental Rights Motion is rendered no later than 30 days after the conclusion of the evidentiary hearing.
[28] N.R.S. § 432B.5907 requires the Supreme Court to use its best efforts to ensure that any appeal is resolved no later than 6 months after the appeal is filed or, if the Court orders full briefings on the matter, no later than 12 months after the appeal is filed.

If you have questions regarding what to expect, how to proceed, or how to handle an unexpected issue, feel free to contact your mentor at the Children's Attorneys Project for assistance and advice.


Court reviews progress every 6 months. NRS 432B.580. Permanancy Planning Hearing 12 months after initial removal (unless excused). NRS 432B.590
Child's family does not complete reunification plan.
Reasonable efforts to reunify are not required NRS 432B.393 (3)
DFS files a motion to terminate parental rights and serves the motion and notice of the hearing on the parents or legal guardians of the child; the attorney and any guardian ad litem for the child; any known relative of the child within the fifth degree of consanguinity who is residing in this state; if applicable, each Indian tribe of the child; and the State/County Child Support Enforcement agency. Parents and children are entitled to have counsel appointed to represent them at trial. NRS 128.060 & NRS 432B.5902
Evidentiary hearing to establish, by clear and convincing evidence (NRS 128.090) whether the best interests of the child will be served by the termination of parent's rights to child (NRS 128.105). (See grounds set forth in NRS 128.105, 128.106, 128.107, 128.108 and 128.109.) Court chall use its best efforts to unsure that a written decision is rendered no later that 30 days after the conclustion of the evidentary hearing. NRS 432B.5906
Court orders termination of parental rights. NRS 128.110.

CHAPTER SEVEN
Children in Court

Review Hearings

Generally, Review Hearings are informal in nature. All parties are given an opportunity to speak – generally, no one is placed under oath.

It is important for your client to be present at his Review Hearings to tell the court how he is doing and what he would like to see happen. The only exception to this would be if your client absolutely does not want to attend and you feel you can adequately represent his position without him. You need to prepare him for the Hearing by explaining the physical layout of the court, the process of when to speak (when asked by the judge), where to stand (with you), and what he might expect to see and hear.

You client needs to know that you will be at the Review Hearing to speak on his behalf, but that sometimes, the judge will directly ask him general questions, such as: How is he doing at home? In foster care? In school? Does he have any issues or requests for the court? Sometimes the judge will prefer to take your client into Chambers and speak to him outside the presence of counsel. Ordinarily, CAP attorneys do not object to this, because they know that their client is expecting the questions and is capable of providing appropriate responses and, barring special circumstances, a direct request from a child is more persuasive than any amount of rhetoric from a CAP attorney.

Criminal or Evidentiary Proceedings

Children are often called to testify in criminal cases and in evidentiary hearings (Plea Adjudication or in a Motion to Terminate Parental Rights). If your client is subpoenaed, you must notify all parties involved in the case that the child is represented by counsel - you. You should demand to be present any time your client is questioned and advise the parties that he may not be questioned outside your presence (note that the DA may try to ignore this). It is particularly important for children being questioned to have an attorney present because the questions asked may be misleading or confusing to a child. Some children think they must answer all questions put to them, even if they don't know or can't remember the answer. You can protect your client from giving false information and can help your client understand the question being asked so that he may answer truthfully. Additionally, your client will be more at ease if someone he knows and trusts is present during questioning. On the other hand, you should expect that the DA will oppose your efforts and claim you are obstructing justice, or something similar.

Nevada has adopted the Uniform Child Witness Testimony by Alternative Methods Act at N.R.S. § 50.500, et seq. The Act provides that a child witness under the age of 14 *may* be permitted to testify by alternative means (that is, not in an open courtroom, in the presence and full view of the court and all of the parties, who may participate and view and be viewed by the child). If your client is under 14 and subpoenaed to testify but does not want to, you will first want to contact the party serving the subpoena to see if they will withdraw the subpoena (unlikely) or voluntarily agree that your client may testify by alternative means (also, unlikely). Failing this, you must file a motion in that court to ask the judge to permit your client to testify in an alternative manner.

In a *criminal* proceeding, the court may allow your client to testify by an alternative method only if *clear and convincing evidence* demonstrates that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open courtroom and/or if he is confronted face-to-face by the defendant. However, in practice, this hardly ever happens. In a *noncriminal* proceeding (including TPR), the court will allow your client to testify by an alternative method if a *preponderance of the evidence* demonstrates that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact (the court will consider the nature of the proceeding; the age and maturity of the child; the relationship of the child to the parties in the proceeding; the nature and degree of emotional trauma that the child may suffer in testifying; and any other relevant factor). N.R.S. § 50.580.

Of course, sometimes your client will *want* to testify. Also, if your client is 14 or older or if, despite your best efforts, the court orders that a younger client must testify in open court, you must prepare him for what lies ahead. Children often have very basic questions. In addition to wanting to know why they are being called, what questions they will be asked and who will question them, children also want to know what the courtroom looks like, what the judge looks like, who will be in the courtroom, where everyone will sit, etc. Children often are afraid of the judge and want to know if the judge will be mean or if the judge doesn't like what they say or gets mad at them, can they be put in jail? Answering questions about the court and the parties and exploring with your client what kinds of questions he will be likely to hear will help make the experience less traumatic for your client.

If your client is scheduled to appear in court, an excellent resource to refer them is Kids' Court School, a free program offered by the UNLV William S. Boyd School of Law. The purpose of this program is to educate children and youth about the investigative and judicial processes and to teach children strategies to decrease anxiety typically associated with participation in the judicial process. The curriculum consists of two 1-hour sessions and are held at the Thomas and Mack Legal Clinic inside the School of Law. For further information, contact your case mentor or Pro Bono Project staff at probono@lacsn.org.

CHAPTER EIGHT
Specific Child Protection Issues

Foster Care Issues

The bulk of your court appearances will occur after the case has been transferred from the CPS caseworker to the DFS foster care worker and the child is in foster care.

Foster care may be a therapeutic foster home which requires that the foster parents have a special license. The therapeutic foster homes are generally run by "private" agencies paid by the state, such as Olive Crest, SAFY (Specialized Alternatives for Families and Youth), and Eagle Quest. Private foster care agencies may also run a group home, which house several children in one home. Girls and Boys Town and St. Jude's Ranch are group foster homes which are set up in a more traditional "family-like" setting. Foster care may also be a "typical" family home in which the foster parent(s) are licensed individually by the state.

Several issues can arise in the course of your representation of your client. Children who have been abused or neglected and wrenched out of their "normal" living environment may have emotional or behavioral issues that lead them to "act out" or verbalize their anger. The sad fact is that behavior which, if exhibited by your natural child, would result in "grounding" or other loss of privileges, in the case of an abused or neglected foster child, may simply mean that he gets kicked out of the foster home and must change residences (and schools) again. It is very typical for a child to have three or four different foster care placements before a permanent home can be arranged for him[29]. Given the disruption not only in home environment but also in your client's education, you may need to file a motion to enjoin a change in foster care placement until the end of a school term, for example. (*See*, Discussion of Education below).

Moreover, it is possible that DFS has failed to place all siblings in the same foster home. Pursuant to statute, it is presumed to be in the best interest for siblings to be placed together. This is a rebuttable presumption which must be done by DFS/DA and be endorsed by the court. You should advocate for this early in the case before the kids adjust and no longer want to move yet again. You should file a motion to require this and can ask for the children to be temporarily placed in Child Haven with weekly status checks to make sure DFS has found a home for them.

While it may be difficult to place a large group of siblings in the same foster home, it is not impossible. It should be even less difficult to find one willing to house 2 or 3 siblings together. The fact that it may be "difficult" to place a group of siblings in the same home does not excuse DFS from making reasonable efforts to ensure that siblings remain

[29] Testimony before the Nevada Legislative Subcommittee Workgroup on Foster Care, January 31, 2008.

together. You may need to file a motion for lack of reasonable efforts if it appears that DFS is failing in its duty to place the siblings in the same home. If all siblings cannot be placed in the same foster care home, a regular schedule of visits **must** be arranged (*See*, Visitation below).

Visitation

Although N.R.S. § 432B.550 (6) "presumes" that it is in the best interests of the child to be placed together with his siblings and that preference be given to placing children with a suitable relative or fictive kin, in practice, this is widely ignored by DFS. Children are regularly placed in the care of non-relatives and siblings are separated for placement purposes. If a child is not placed with siblings, DFS must prepare "a plan for the child to visit his siblings, which must be approved by the court." N.R.S. § 432B. 580 (2)(b)(4)(II). DFS "must request the court to issue an order requiring the visitation set forth in the plan for visitation. If a person refuses to comply with or disobeys an order issued pursuant to this subsection, he may be punished as for a contempt of court." N.R.S. § 432B.580 (4) (emphasis added).

Your client is entitled to have visitation with his parents, siblings and other caretakers, if appropriate, and as a matter of right. Older children, in particular, may want to maintain the bond with their families and know that they are safe. Younger children need to be given the opportunity to bond with their parents and older siblings. Visitation is not a privilege that can be "lost" as punishment for unwanted behavior. However, you need to be aware that sometimes foster parents or other placement facilities will withhold visitation to punish unwanted behavior – if this happens, you should be prepared to go to court and get an order stopping this practice. Usually, visits with parents or siblings occur on a set schedule determined by DFS. You should advocate for increased visitation if appropriate and seek a court order if necessary. However, it is important to keep in mind that when you request an increase in visitation, it is usually the caseworker who must transport the children and supervise the visits. It might help your client get more visits with family if there is a CASA volunteer willing to transport the children or supervise some of the visits if necessary.

Chapter 125C of N.R.S. deals with custody and visitation issues. Although the language is geared more toward the interests of parents, grandparents, great-grandparents and "fictive kin," such as the spouse of a parent who is not the birth parent of the child, rather than children who want to see their siblings, there is an "all purpose" visitation clause found in 125C.050(2) which states: "[i]f the child has resided with a person with whom he has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during his minority, regardless of whether the person is related to the child." This language has been reasonably interpreted to encompass your client, who is a "person" with a "meaningful relationship" with the minor siblings with whom he has lived and provides the statutory authority for a Petition for Sibling Visitation in order to get or increase visitation.

Similar to preferences governing temporary placements, Nevada law requires that "a child placing agency shall, to the extent practicable, give preference to the placement of a child for adoption or permanent free care together with his siblings." N.R.S. § 127.2825. It is especially important for you to understand that any visitation that your client wants with his siblings should be memorialized in a court order before the termination of parental rights (N.R.S.§125C.050) and before an adoption is finalized (N.R.S.§127.171). Although there may still be ways to arrange visitation if those deadlines are missed, it will be a cumbersome process, without any guarantee of success.

Reasonable and Prudent Parent Standard/Normalcy

For years, some foster care policies unnecessarily created barriers for youth to live normal adolescent experiences (e.g., staying over at a friend's house, getting a driver's license, going to prom, or getting a part-time job), that were similar to their peers. The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183/H.R. 4980) was enacted to alleviate these barriers. The law requires states to implement a "reasonable and prudent parent standard" to allow foster parents (including licensed kinship caregivers) to use prudent decisions in determining whether or not to allow a child to participate in age or developmentally-appropriate activities. According to the Act, a reasonable and prudent parent is one who uses careful and sensible parental decisions that maintain the health, safety, and best interests of the child.

The reasonable and prudent parent standard allows caregivers to give their foster children permission to do daily, age appropriate activities without waiting to obtain permission from the case worker or the court. While foster youth will likely never have what would be considered a "normal" childhood or adolescence – the fact that they are in foster care in the first place negates that possibility – this law creates more normalcy for these children and youth while they are out of the home.

If you believe that your client is being denied the opportunity to participate in age appropriate, "normal" activities, bring it to the attention of the DFS case worker and/or the court to see what steps can be taken to support normalcy for your client.

Education

Education Decision Maker

During the 2019 Nevada Legislative Session, Assembly Bill 156 was passed by unanimous vote. AB 156 amended NRS 432B.457 to require family courts to appoint an education decision maker for every child in foster care and for additional school related reports to be attached to permanency hearing reports submitted by DFS. NRS 432B.457 (2)(a)(4) requires an education decision maker, or "EDM", to be appointed no later than the disposition hearing; however, the EDM can be appointed earlier if needed. There is a rebuttable presumption the EDM will be the child's parent or guardian, but the EDM can also be the foster parent or fictive kin if the parent or guardian is unable or unwilling to act

as the EDM. The EDM might also be the CASA assigned to the child. If there is no other person available to act as an EDM, a surrogate shall be appointed. The court can also make a finding that it is not in the best interest of the child to appoint the parent or guardian but this determination cannot be used as evidence of parental fault in any termination of parental rights proceeding.

The duties of the EDM are also set forth in the statute. The EDM shall have an initial meeting with the child and can address disciplinary issues, ensure the disabled child receive a free and appropriate public education or FAPE under IDEA. If the child is at least 14 years, the EDM shall ensure that appropriate education services are in place for transition to independence. The EDM shall also consult with DFS about school of origin and participate in education meetings related to the child. The court can revoke the appointment of the EDM if the court determines it is no longer in the best interest for the child but must appoint another EDM.

The legislature also amended NRS 432B.580 to require additional school related information be attached or contained in the permanency hearing reports The following information must now be contained in the report:

- the child's most recent report card;
- a statement of the number of credits a child has earned if in high school;
- the number of missed school days;
- the scores any child has obtained on any standardized test;
- any information from the education decision maker.

School of Origin

In 2015, the United States Congress passed the Every Student Succeeds Act. The Act required each state to adopt a plan that described the steps in which it would take to ensure the educational stability of children in foster care. This included the requirement that foster children, with limited exception, remain in their school of origin.

In 2017, the Nevada Legislature passed AB 491, which brought N.R.S. in line with the federal law. AB 491, requires that a child who enters into foster care, or changes placement while in foster care, remains enrolled in his school of origin if the child welfare agency determines that it is in his best interests.[30] In determining best interests, DFS, in consultation with the CCSD, must consider:[31]

- the child's wishes;
- the educational success, stability and achievement of the child;
- any individualized education program or academic plan developed for the child;
- whether the child has been identified as an English learner;
- the health and safety of the child;

[30] N.R.S. § 388E.105
[31] *Id*.

- the availability of necessary services for the child at the school of origin; and

- whether the child has a sibling enrolled in the school of origin.

AB 491 also requires DFS and the CCSD to provide and pay for the cost of transportation of the child to his school of origin.[32] If a dispute arises between DFS and the CCSD that is related to the child's transportation to his school of origin and the dispute is not resolved within five business days, the juvenile court with jurisdiction over the child, must resolve the dispute by court order within five business days.[33] DFS and the CCSD must provide the child with transportation until the dispute is resolved.[34]

Depending on your client's wishes, you may need to advocate for him to remain in his school of origin. Please contact your mentor at the Children's Attorneys Project if you need assistance.

Academic Learning Plan

Nevada law requires that an Academic Learning Plan (ALP) be developed for every elementary age student in foster care (N.R.S. § 388.155). The ALP should be developed by the school counselor in collaboration with the student's teacher, the DFS caseworker, the school based foster care advocate, other relevant school staff, and the foster parent/guardian. Each ALP should: (a) consider the unique circumstances and educational background of the child; (b) be used as a guide to plan, monitor, and manage the student's educational development; (c) be used to determine any assistance that may be necessary to the academic success of the student; (d) be reviewed each time a student enrolls in a new school; and (e) be reviewed annually or at the beginning of each school year.

Nevada law also requires that all students in middle school, regardless of whether they are in foster care, must have an approved three-year Academic Learning Plan developed during their sixth grade year (N.R.S. § 388.165). The ALP must set forth the specific educational goals the student intends to achieve before promotion to high school. The student and foster parent/guardian must work in consultation with the school counselor to develop the plan. The plan must be reviewed once each school year and revised as necessary.

Finally, Nevada law also requires each student in ninth grade, regardless of whether they are in foster care, to have an approved four-year Academic Learning Plan (N.R.S. § 388.205) The ALP plan must set forth the specific educational goals that the student intends to achieve before graduating from high school. The student and foster

[32] N.R.S. § 388E.125
[33] *Id.*
[34] *Id.*

parent/guardian must work in consultation with the school counselor to develop the ALP, which must be reviewed at least once each school year and revised as necessary.

McKinney-Vento

McKinney-Vento Education for Homeless Children and Youth is a federal law that ensures immediate enrollment and educational stability for homeless children and youth. McKinney-Vento defines homeless children as "individuals who lack a fixed, regular, and adequate nighttime residence." This includes:

- Children and youth sharing housing due to loss of housing, economic hardship or a similar reason
- Children and youth living in motels, hotels, trailer parks, or camp grounds due to lack of alternative accommodations
- Children and youth living in emergency or transitional shelters
- Children and youth abandoned in hospitals
- Children and youth whose primary nighttime residence is not ordinarily used as a regular sleeping accommodation (e.g., park benches, etc.)
- Children and youth living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations
- Migratory children and youth living in any of the above situations

Under McKinney-Vento, eligible homeless children can stay in their home school, do not need to provide the school with the usual required documentation, and must be provided school supplies, case management, transportation, and other services (including free breakfast and lunch) as needed. CCSD has a homeless office dedicated to this issue and each school has an advocate who can help the child receive services.

Other Issues

There are other unexpected issues that may arise in the context of a child's education. For example, a change in placement that results in a change of school may mean that your client must have a new school uniform. It is possible for your client to be expelled from school because he lacks the correct uniform. DFS has funds that can be accessed on an emergency basis, in order to meet these unpredictable needs.

If your client's caseworker and/or caseworker's supervisor cannot or will not get the funds needed for these or other educationally-required materials, contact your mentor at the Children's Attorneys Project and they will help you get action for your client (although you could always go to court for an order, this may take time and in the interim, your client is missing out on his education).

Please note, every CCSD campus now has a "foster care advocate" who oversees the rights of students in foster care. This advocate is usually the school counselor and should be contacted if any issues arise with your client.

Special Education

Special education is a program or course of instruction individually designed to meet a child's unique educational needs. It consists of teaching, services and support for children with disabilities so that they can do well in school. Special education is free, should be "appropriate", and should treat each child as an individual. Special education is services and supports — it is not a place.

The first step in determining whether a child qualifies for special education is determining whether the child has a disability under the Individuals with Disabilities Education Act (IDEA). The second step is to show that the child needs special education services or that the disability adversely affects the child's education performance. The following disability categories fall under the IDEA:

- Autism
- Blindness or Other Vision Problems
- Brain Injury
- Deaf-Blindness
- Deafness or Other Hearing Problems
- Developmental Delay (for younger children)
- Emotional / Behavioral Problems
- Health Impairments (such as ADD/ADHD, Fetal Alcohol Syndrome, and Tourette's Syndrome)
- Learning Disability
- Mental Retardation / Intellectual Disabilities
- Orthopedic Disability
- Speech or Language Impairment

The Clark County School District is responsible for conducting evaluations of school age children to determine the existence of a learning disability. To ensure a child is considered for special education services, parents, foster parents or educational surrogate parents should submit a written request to the child's school principal. The school district then has 45 calendar days from receipt of the request to complete the evaluation or 30 days to provide a written notice of its refusal to do so, and why.

Many of our clients are already identified as being eligible to receive special education services. However, some who should be eligible, or at the very least evaluated for special education, fall through the cracks and struggle at school when appropriate supplementary supports and aids would benefit them. Children who have been diagnosed with a disability and who are eligible to receive special education services are entitled to have an Individualized Education Program (IEP) developed and implemented by the CCSD. An IEP is like a contract between the parent and the school. The IEP should tell what the school will do to help the child learn (e.g., use a different way of teaching; make school materials simpler; change the amount or kind of information the child should learn; provide help on class work, homework or tests; give the child services like speech therapy, physical therapy or counseling; provide a person to support the child or the child's

teacher). An IEP meeting must occur at least annually. If your client already has an IEP or if your client is having academic or behavioral problems at school (which may indicate an unidentified yet eligible student), contact the Education Advocacy Unit which is an adjunct of the Children's Attorneys Project at 702-386-1070 option 5 or specialed@lacsn.org. You may also review the information contained on our website. The Education Advocacy Unit provides advice, training, advocacy, and legal representation in the area of Special Education to those involved in the education of children with disabilities.

Practice Tip: The caseworker cannot sign an IEP as a parent. If the biological parent or foster parent is unwilling, a "volunteer education advocate" can be appointed to fulfill this role. Legal Aid Center has a program that recruits and trains, law students, paralegals, CASAs, and other volunteers to serve as volunteer education advocates. Please contact surrogates@lacsn.org for more information.

Placement with Relatives or Fictive Kin

If a child cannot remain safely with his parents, many children and the court, prefer to see a child placed with relatives or a fictive kin, rather than strangers.

N.R.S. § 432B.550(6)(b) states the Nevada preference that children be placed with a relative or a fictive kin. (This is also a preference set out in ASFA.[35]) CPS and DFS are required to do a thorough background check of the relatives/fictive kin and their home before the child can be placed with them. This process is subject to bureaucratic delay, often taking several weeks or months, particularly if the relatives/fictive kin live outside the state. If your client wants to live with relatives/fictive kin who live outside Nevada and the placement is being delayed because the background checks are not completed, you should ask the court to order that the child be sent before the full background check is completed. Failing that, you can ask that your client be sent on a 30-day visit, pending the outcome of the investigation (which can be renewed, indefinitely). Depending on the case and the judge, your request may or may not be granted.

Sometimes, the financial ability of relatives/fictive kin to care for these additional family members may be limited. Relatives have the right to become licensed as foster parents and receive foster care payments.

Kinship Guardianship Assistance Program

In 2011, the Nevada Legislature enacted Assembly Bill 110 to establish a Kinship Guardianship Assistance Program (KinGAP) – codified in NRS §§ 432B.621 to 432B.626. KinGAP is a financial assistance program for relatives who take legal guardianship of a child who has been in foster care. To qualify for KinGAP, the prospective guardian must

[35] *Judge's Guidebook, supra* n. 23 at 19.

be a relative and 18 years or older. The child must have resided with the relative for at least six consecutive months and the relative must have been licensed for a minimum of six months. Additionally, to qualify for KinGAP, the following requirements must be met:

- The child must have been removed from the home pursuant to a voluntary placement agreement or as a result of judicial determination that continuation in the home would be contrary to the welfare of the child;
- The child must have had a determination by the Title IV-E agency that being returned home or adopted are not appropriate permanency options;
- The child must have a strong attachment to the prospective relative guardian and the guardian is committed to caring for the child permanently;
- If the child is 14 years or older, he must consent to the kinship guardianship arrangement; and
- The prospective guardian must enter in a written agreement for KinGAP with the child welfare agency.

In 2019, the Nevada Legislature enacted Assembly Bill 498. AB 498 requires the State to provide financial assistance, through KinGAP, to a fictive kin who has been appointed as a legal guardian of a child in foster care. This will become effective July 1, 2020.

Kinship Care Program

If relatives do not wish to become licensed, the federal government and the State have authorized that these relatives may receive certain payment subsidies to offset the cost of caring for these children – Kinship Care Payments. To be eligible for these payments a relative must:

- Be age 62 or older;
- Be a non-parent, non-needy relative caregiver (not requesting assistance for yourself.);
- Be caring for and residing with a child who is related by blood, adoption or marriage for at least six months;
- File for and obtain Nevada court approval of legal guardianship;
- Comply with court imposed requirements;
- Relative household members must have combined income below 275% federal poverty level and the child must meet the age, citizenship, and resource eligibility requirements for the Temporary Assistance for Needy Families (TANF) program.

If the relative is under 62 years of age, a hardship waiver of the age requirement can be considered if the child or children for whom assistance is requested either have “special needs” or are a “hard to place” sibling group and an extreme financial hardship to the caregiver is demonstrated.

If your client wants to be placed with a relative, or fictive kin, and financial constraints are an issue, contact your mentor at the Children’s Attorneys Project to help get appropriate

payments (e.g., Licensed Foster Care, TANF, Kinship Care, KinGAP) for your client's relative/caretaker.

Interstate Placement

When a child is placed out of the state, DCFS, DFS and CPS must comply with the terms of the Interstate Compact on the Placement of Children (ICPC). The ICPC is an interstate agreement among the states that establishes procedures and responsibilities for out of state placements.[36] Although a comprehensive discussion of ICPC is beyond the scope of this Manual, a brief explanation of the process is as follows: the state that will receive the child (the "receiving state") must investigate the family and the home where the child will be sent to determine if the child will be safe in that home and then notify the sending state of its findings. If the sending state sends the child, it remains primarily responsible for the child's welfare. The ICPC process often takes several months, although the Safe and Timely Interstate Placement of Foster Children Act of 2006[37] may help by providing incentive payments to states to complete home studies in a timely fashion.

ANNA: Anna was a 16-year old girl awaiting placement with her aunt and uncle in California. The Court had determined that the out of state placement should have priority status, yet she remained in an emergency shelter for over 3 months, prevented from living with willing relatives by a cumbersome ICPC process. A pro bono attorney can ensure that requests to receiving states are made early and that priority cases are expedited.

ICPC Regulation No. 7 mandates that proposed placements with a close relative of a child who has unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian; who is four years or younger; who is in an emergency placement; or who already has spent a substantial amount of time with that relative, are deemed "priority placements" and receiving states must reach a decision on placement within twenty business days of receipt of the request for investigation from the sending state.[38] However, ICPC lacks enforcement mechanisms: while it permits a judge from the sending state to contact a judge in the receiving state about delays in approving placements, nothing requires the judge in the receiving state to answer the telephone!

There are many voices urging a change in the ICPC – particularly, in providing meaningful enforcement or other remedies for intransigent behavior by a potential receiving state. However, unless change comes, the process will be fraught with delays and complaints.

If you believe that the ICPC process is lagging in your case, bring this to the attention of the court and/or contact your mentor at the Children's Attorneys Project for advice.

[36] N.R.S. § 127.320, *et. seq.*
[37] Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239).
[38] Regulation VII of the ICPC.

Open Adoption

A lawyer's representation should last until the case is closed. The case will be closed when the child is reunified with his family or when a permanent guardian is found and the county wardship is terminated or when the child is adopted.

Some parents recognize their limits and choose to relinquish (voluntarily give up) their parental rights. Relinquishment is a courageous action and has advantages for your client. First, it speeds up adoptions. Second, it eliminates an adversarial tone from the proceedings. Third, in some cases, this voluntary act by parents gives the child "permission" to fully bond with a new family.

Some parents agree to relinquish their parental rights in hope that an open adoption agreement can be negotiated. An open adoption is one where an agreement between the adoptive parents and the biological parents is reached regarding communication between the families in the future. The communication can be as much or as little as the parties agree. For example, an adoptive family might agree to send a picture once a year to DFS for the biological parent to pick up. The adoptive family may agree to invite the biological parent to a birthday party every year or may agree to a regular visitation schedule. The agreement can be as open or as closed as the parties desire.

RICHARD: Richard was eight years old when his father abandoned him. He came into the foster care system diagnosed with severe developmental and educational problems. After being bounced around, he was placed in a loving foster care home with a woman who wanted to adopt him. In the process of finalizing the adoption, the father changed his mind and asked the state to reunite them. The child was terrified of returning to his abusive father just when he was finally getting a permanent home. A CAP attorney represented Richard and succeeded in allowing him to be adopted into his new family, while allowing him to see his father through visits in an "open" adoption. Richard is thriving in his new loving adoptive home.

Whether or not you should advocate for an open adoption depends on your client's wishes. If the parties decide to attempt to negotiate an open adoption agreement, you should be involved in the negotiations, since it may require that your client continue a relationship he has no interest in maintaining. An Open Adoption Agreement will not work, even if both sets of parents agree, if your client does not want to participate.

N.R.S. § 127.187 states that the natural parent or parents and the prospective adoptive parent or parents of a child to be adopted "may enter into an <u>enforceable</u> agreement that provides for postadoptive contact." However, a parent's agreement to relinquish parental rights cannot be contingent on the parties agreeing to an open adoption.

Adoption Assistance

Sometimes financial and other assistance is required in order to make a child with "special needs" adoptable. Nevada defines a child with special needs as one who has at least one of the following needs or circumstance that may be a barrier to placement or adoption without financial assistance:

- Five years of age or older (if age is the only factor);
- Considered difficult to place because of race;
- Member of a sibling group of two or more children to be placed together and at least one of the children is three years of age or older;
- Diagnosis of a medical, physical, emotional or mental disability or documented history of abuse/neglect requiring ongoing treatment intervention; or
- At risk of developing further problems due to documented factors in his/her background. ("At risk" means those genetically related to persons having inheritable physical, mental, emotional or behavioral concerns; prenatal substance abuse exposure; or other factors determined by a treatment professional to potentially result in a future need for treatment or special services.)

Under Nevada law, people adopting "special needs" children are entitled to subsidies, which are loosely defined. The amount of an Adoption Subsidy is negotiated in each case. Adopting parents who do not agree with the DFS "offer" are entitled to an independent administrative review of the proposed subsidy and if they are not satisfied with the result of that review, are entitled to judicial review.

Any Adoption Subsidy is subject to annual renewal and review: adoptive parents receive an annual adoption assistance review form that updates the agency of any change in living or school arrangements, family circumstances or the needs of the child. If the adoptive parents dispute the agency's determination after annual review, they may seek administrative review and are entitled to enjoin any changes in their existing agreement during the review period (and judicial review thereafter).

In addition to the subsidy, the family may receive additional money per child to cover non-recurring adoption expenses. There are other services that may be provided to an adoptive family: parent training, support groups, case management, therapeutic counseling/intervention, homemaker services, child care and respite care. Not all of these services will be offered in each case. However, these support services are intended to prevent a failed adoption, so if possible, you should advocate with the Permanency Worker and Adoption Worker for the maximum benefits for your client's new family.

If you have questions regarding Open Adoption Agreements, Adoption Subsidies or post-adoption services – what is an appropriate level of assistance to expect, what the prospective adoptive parents should ask for in a particular case – please feel free to contact your mentor at the Children's Attorneys Project for advice or assistance.

Psychological/Behavioral Issues

At some point, your client may be placed in one of the various locked "mental health" facilities. These facilities include Spring Mountain Treatment Center, Desert Willow Treatment Center, Seven Hills, and Desert Parkway Behavioral Healthcare Hospital.

Prior to 2005, a caseworker could place a child in such a facility without prior court approval: AB 369 passed in 2005 requires court review of any *proposed* placement in a restricted setting, a review within five business days of any *emergency* placement in such a facility, and limits the duration of each admission.

N.R.S.§ 432B.6075 requires that DFS file a Mental Health Petition before admitting a child to a locked facility. If DFS files such a petition, the statute requires that the child **must** have counsel appointed for him. The petition must be supported by a certification of a physician, psychiatrist or licensed psychologist, stating that examination of the child revealed that he is emotionally disturbed and likely to harm himself or others if not admitted to a restricted facility. The court must find, **by clear and convincing evidence**, that a child's behavior is such that he is likely to harm himself or others if not admitted to such a facility. Before an Order for Admission or Renewal of such an order can be issued, the court must explore other alternative courses of treatment within the least restrictive appropriate environment. N.R.S. § 432B.6076

The initial court order supporting any admission authorized under N.R.S. § 432B.6075 expires in ninety days. If DFS believes your client should remain in the locked facility, the DA will have to file another petition, alleging why further treatment in the facility would be in the best interests of the child. N.R.S. § 432B.608. Any renewal of the order for admission will last for only sixty days. Any subsequent renewal(s) will be for successive sixty day periods and will require the filing of a new petition in each instance.

Sometimes, your client will want to remain in the facility. If he consents to remain, it is important that he be physically present at the court hearing to voice his consent. If he consents, you should negotiate a lesser amount of time in exchange for his consent – that is, thirty days as opposed to ninety, for example. Usually, the DA will be so pleased that he/she does not have to put on a full offer of proof that he/she will gladly agree. Other times, your client can't get out of the locked facility fast enough! He will want you to attack the validity of the assertions in any petition seeking his admission/commitment to the facility. You may ask the court to order that a second opinion be obtained, paid by DFS, to corroborate or contradict the medical certifications that accompany the petition. N.R.S. § 432B.6078. You may always attack the proposed commitment on the ground that less restrictive treatment options are available and should be offered to your client.

You should be aware that state child welfare agencies and private foster care agencies

are reimbursed at higher levels for "intensive need" placements. It is a perverse truth that the Medicaid system of reimbursements provides an incentive to label children with a psychiatric disorder, institutionalize and drug them. More federal dollars are available for foster care placements and for related services to a "labeled" and medicated child.

JIMMY: Jimmy was a 13-year old who had been in foster and group homes almost since birth. At the time his case was assigned to his pro bono attorney, he had spent nine months in a locked treatment facility, where his only opportunity to go outdoors was a small enclosed courtyard. Not surprisingly, Jimmy had a history of behavioral problems. Within one month after he had an attorney, Jimmy was transferred to a group home, and began attending junior high, doing well both academically and socially.

Psychotropic Drugs/Chemical Restraint

Closely related to the "involuntary commitment" issues lurking in locked facility placements is the issue of involuntary chemical restraint.

As previously mentioned, it is entirely predictable, if not totally understandable, that your client displays anger, depression, resentment or anxiety. Children struggling to cope with the trauma that brought them into protective custody "act out" not because they are sick, but because they are healthy. Most adults wrenched from the bosom of their family through no fault of their own would likewise respond with significant behavioral changes. However, foster children are frequently diagnosed with non-organic psychic illnesses and medicated to induce docility.

It is undeniable that many psychotropic drugs are the wonders of modern medicine and that mood altering drugs can cause significant, positive behavioral changes in adults. However, many modern psychotropic drugs have had little or no research into the safety of their administration to children or their potential long term effects on a developing brain and body. The administration of these drugs may manifest themselves in noticeable ways: semi-comatose or flat, "zombie-like" affect, lethargy, inability to focus, mental slowness, drooling, twitching, sudden weight gain or weight loss, etc.

In addition, seldom will your client be on a single drug. Rather there will be a pharmaceutical cocktail of psychotropic drugs that will be administered to him on a daily basis, despite the absence of research into potential drug interactions and adverse physical effects when multiple drugs are given to young children.

Moreover, the mere administration of mood altering drugs may have psychological effects on your client: he learns he is not responsible for his own actions, he may come to see himself as somehow deficient or "defective", he learns to use drugs to deal with social/academic problems, and he suffers the stigma of being labeled with a psychiatric disorder (with potential long-term consequences for future employment or education opportunities or even obtaining a driver's license). If your client is medicated to an alarming state, there are several things you might do.

First, learn your client's medical history. You should request copies of his medical chart and previous medical records to get a current list of the medications he is being given.

Review all hospitalization records, and especially note the nurse's notes (most likely to be the one involved with the child and noted behavioral characteristics that led to administration of the drugs). It is important that you elicit, from teachers, parents, other adults who know your client, what his behavior was before the drugs were administered.

Second, talk to the mental health professional who prescribed the medications:

1) What is the child's diagnosis?
2) What is the name of his current medications? Are they known by other names? Are there alternatives? Are the medications addictive? Can they be abused?
3) How will each individual drug help your client? How long before an improvement should be seen? How long will you continue administration without this improvement before his medication is changed?
4) What is known about the drug's use in children your client's age: efficacy, known adverse effects, and rare or serious side effects?
5) Were laboratory tests done before the medications were administered? Will any tests need to be done while your client is taking the medication?

Third, learn about the prescribed drugs, including the manufacturer's recommendations (indications and contraindications), side effects and whether they have been clinically tested on children. Information can be found in the most recent version of the *Prescriber's Digital Reference* (PDR).[39]

Fourth, file a motion to ask the court to order a second medical opinion as to the type and amounts of medications that are safe and appropriate for a child your client's age, in your client's condition. N.R.S.§ 432B.6078.

Fifth, develop strategies for the hearing on the motion. Since any restraint placed upon a child in protective custody should be the least restrictive type and amount, you may be able to demonstrate that no alternatives were first tried before drugs were administered. Be prepared with documentation (the PDR, for example) of side effects. In the case of individual drugs – they were probably not clinically tested on children. In the case of multiple drug therapies, there is little, if any, research into drug interactions, and the long-term effects on developing brains and bodies are unknown. You can challenge the diagnosis – there are no known "organic correlates" (physical findings) that diagnose "behavior disorders" – their diagnosis is entirely subjective. You can demonstrate that no blood tests, ECG, EEG, MRS, CT or PET scan or other objective test were completed before diagnosis. There is no "treatment

[39] The PDR is available on-line at http://www.pdr.net/browse-by-drug-name.

specificity" for behavior disorders – if a child has seen multiple doctors, the child has probably been given a laundry list of different psychotropic drugs. Most importantly, you need to develop the idea that the drugs are not being used to address any empirically identified physical pathology, but rather to treat behavior.

Children who take medication are "reviewed" by a psychiatrist every 30 days, to verify the appropriateness of the prescriptions. These can be cursory or perfunctory reviews. If you think your client is over-medicated, it is important for you to attend this medical review with the prescribing psychiatrist to ensure that this review of your client's medications is comprehensive.

In 2011, there was a change to the statute which established "persons legally responsible" for the psychiatric care of the child, commonly referred to as PLRs. Any child who is receiving psychiatric care must have a PLR appointed to him. This person can be the natural parent or the foster parent, but most often the default, DFS Nursing staff, is nominated and appointed by the court. Although this law was well-intended, it has created issues regarding in some instances, the quality and training of the PLRs coupled with the heavy caseloads of the DFS Nursing staff. You will still need to keep a close eye on this issue in the event your client is receiving psychiatric services. Feel free to contact your mentor at the Children's Attorneys Project for help.

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) is a federal law that assists certain undocumented children in obtaining legal permanent residency. Typically, SIJS is granted to children who are placed in foster care (although children under the jurisdiction of the juvenile delinquency court may also be eligible for SIJS). Special Immigrant Juvenile Status is a way for a ward to become a lawful permanent resident of the United States (i.e., get a "green card"). A lawful permanent resident has the right to live and work permanently in the United States and to travel in and out of the county. Also, after five years, permanent residents can apply for U.S. citizenship.

Lawful permanent resident status is permanent – a Special Immigrant Juvenile who obtains permanent residency will keep it after he is no longer under juvenile court jurisdiction. The person remains a permanent resident for his entire life. The only reasons it would end would be if the person became deportable for some reason, such as violation of certain laws or conviction as an adult of certain criminal offenses or if the person applies for naturalization to become a citizen.

The above benefits come with the green card, but two important benefits come as soon as the SIJS packet is submitted to the U.S. Citizenship and Immigration Services (USCIS). The child who has submitted the SIJS Petition and adjustment of status application are protected against deportation and are granted employment authorization until their cases are decided.

To qualify as a Special Immigrant Juvenile, the applicant must meet the following criteria:[40]

- The child must be under 21 years of age on the filing date of the SIJ Petition;
- The child cannot be married (includes a child whose marriage ended because of annulment, divorce or death);
- The child must be dependent on a juvenile court in the U.S., or the child must be placed in the custody of an agency or department of the state or an individual appointed by the juvenile court (exceptions – the child does not need to currently be under court jurisdiction of the court if the court's jurisdiction ended solely because: the child was adopted or placed in a permanent guardianship or the child aged out of the juvenile court's jurisdiction);
- Reunification with one or both of the child's parents is not viable on account of abuse, abandonment, neglect, or a similar basis under state law;
- It is not in the child's best interest to return to his country of nationality or country of last habitual residence; and
- The child must be inside the United States at the time of the filing of the SIJ Petition.

Before a child can apply to the USCIS for SIJS, the juvenile court must first make several findings of fact concerning the child's SIJS eligibility.[41] The court must find:

- The child is dependent upon the juvenile court or has been legally committed to, or placed under the custody of, a state agency or an individual or entity appointed by the state or juvenile court;
- The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis under state law; and
- It is not in the best interest of the child to be returned to his country of nationality or country of last habitual residence.

Upon receipt of the court order, the SIJS application can be completed. The child, a caseworker, or an attorney can complete the application for SIJS. The child must complete the USCIS forms (including the adjustment of status to lawful permanent resident application), obtain a special medical exam and provide fingerprints, a photograph and proof of age. The application must include the SIJS court order. There is a fee for the application process, but a fee waiver is available. The application can be obtained from the USCIS website at www.uscis.gov.

The USCIS will grant the applicant employment authorization as soon as the application is filed and schedule a date for the SIJS interview. Generally, the USCIS will decide the case at the time of the SIJS interview, which is normally scheduled within 180 days from the official filing date of the SIJS application.

[40] 8 C.F.R. §204.11(c); TVPRA §235(d).
[41] INA §101(a)(27)(J); 8 U.S.C. §1101(a)(27)(J).

At age 18, an eligible youth, who has been a legal permanent resident for at least five years, can apply for citizenship. Since the granting of SIJ status is based on allegations of abuse, abandonment or neglect by the applicant's parents, a person who receives a green card, or even ultimately citizenship through the SIJ program, cannot petition his parents to become lawful permanent residents, even if parental rights were not terminated. The child can petition for his brothers and sisters to receive a green card, however, the child must wait until he becomes a U.S. Citizen and is at least 21 years old.

Although lawful permanent resident status is permanent, green cards are only valid for ten years and must be renewed before the card expires. Furthermore, in order for the child to get Medicaid coverage, he must wait five years after receiving "qualified" immigration status.

Note: SIJS applications are not confidential. When a child applies for SIJS, he alerts USCIS that he is residing undocumented in the United States. If USCIS denies his SIJS application, USCIS may use the information from his application to initiate removal proceedings against him. It is, therefore, very important that you assess the strength of your client's position. Since SIJS can be a complicated process, you should contact your mentor at the Children's Attorneys Project for assistance and advice. Our office can also handle this portion of the case with you or for the client.

"Aging-Out" – Independent Living

Our clients are legally adults on their 18th birthday, and that means making some decisions about their lives and the direction they want to go. Foster children who "age out" at 18 have choices, and it is our responsibility as their attorneys to counsel them on their options and guide them in their choices.

Most of our 18 year-old clients who have been raised in the foster care system champ at the bit to be independent, but lack the skills, the finances and the life experience to be on their own. Many have not yet graduated from high school or want to go to college. If you have a client who is about to "age out" of the system or who wants to be independent, you should work with the caseworker, the client, and the adult(s) with whom your client will be living during this transition period (i.e., foster parents, parent of a friend, other adult, or Center for Independent Living) to develop an independent living plan for your client.

Voluntary Jurisdiction / Assembly Bill (AB) 350

A law affecting all children "aging out" went into effect during the 2011 Legislative Session. AB 350 (Voluntary Jurisdiction) is codified in N.R.S. §§ 432B.591 to 432B.595. It allows young adults to voluntarily remain under the Juvenile Court's jurisdiction beyond the age of 18 up to age 21. It is a popular choice, because it pays clients a monthly stipend while

they work to reach their life goals. Voluntary Jurisdiction clients get a special worker whose job is to help young adults set and achieve their life goals. As adults, our clients make their own decisions about where to live and with whom. The court retains jurisdiction for the limited purpose of resolving disputes. Clients can stay under Voluntary Jurisdiction and get paid until age 21, even if they leave the state of Nevada, so long as they are making progress toward achieving their goals. Because this has been the most popular option, Voluntary Jurisdiction is spelled out in more detail below.

"Child" is *redefined* in N.R.S. § 432B.040 to mean a person who is below the age of 18, or if in school, until graduation from high school;

As used in N.R.S. §§ 432B.591 to 432B.595, "child" refers to a person who is:

- Under the age of 18, and
- Over 18 and remains under the jurisdiction of the juvenile court pursuant to NRS 432B.594.

Voluntary Jurisdiction requires that:

- The court to refer **ALL** children to an attorney at age 17 if reunification is unlikely to occur;
- The court to request that the attorney advise the child of the legal consequences of remaining under the jurisdiction of the court versus "aging out";
- DFS to meet with the child at least 120 days prior to his 18th birthday to determine whether or not the child intends on requesting that the court retain jurisdiction past his 18th birthday; and,
- The child is allowed to change his mind regarding this decision any time prior to his 18th birthday by either informing DFS or the court directly.

If the court retains jurisdiction, DFS must develop a written plan to help the child transition to independent living which must contain the following goals:

- Child saves 3 months worth of expenses;
- High school diploma or GED;
- Postsecondary or vocational education;
- Getting or seeking a job with at least 80 hours a month;
- Housing;
- Have adequate income to meet his monthly expenses;
- An identified adult who will be a mentor; and,
- Connect the child with appropriate services to address any issues with mental health or developmental delays, if applicable.

Step Up must then do the following:

- Monitor the independent living plan and adjust as needed;
- Contact the child by phone once a month and make in person contact at least once

every 3 months;
- Ensure that the child has a mentor; and,
- Conduct a meeting with the child at least 30 days but not more than 45 days before court jurisdiction terminates to determine if the child requires any additional guidance.

Jurisdiction over a retained child continues until the first of the following conditions is met:

- DFS, child, and the child's attorney agree to request termination of jurisdiction;
- The court determines that the goals set forth in the child's written plan have been met;
- The court determines that the child is not making a good faith effort to achieve the goals in the written plan;
- The child's circumstances have changed in a way such that it is infeasible to achieve the goals in the written plan; or,
- The child voluntarily requests that the court terminate jurisdiction; or,
- The child reaches the age of 21.

If a child requests retention of jurisdiction, a written agreement must be entered into between the child and DFS. This agreement must be filed with the court and must acknowledge that:

- The retention is voluntary on the part of the child, and
- That the child in entitled to continue to receive DFS services and monetary payments made directly to the child or to an agreed upon third party.

DFS in not the legal custodian after the child turns 18 and all proceedings pursuant to N.R.S. §§ 432B.410 through 432B.590 will terminate.

If an issue or disagreement arises involving a child who remains under court jurisdiction, DFS, the child and the child's attorney must first try to resolve the matter informally before requesting a hearing. If the issue cannot be resolved either DFS, the child, or the child's attorney may request a hearing.

If DFS is recommending that the court terminate jurisdiction, DFS must send the child and the child's attorney written notice allowing 15 days for either the child or their attorney to request an administrative review. If the administrative review is not requested, the court will terminate jurisdiction upon written notice from DFS. If the administrative review is requested and does not resolve the dispute, a court hearing may be requested.

Funds to Assist Former Foster Youth (FAFFY)

Before AB350 was passed, FAFFY was the only aftercare program for young adults aging out of foster care. It still remains a viable option for clients who want to be completely on their own, without any court oversight. It helps primarily with rent payments and emergency needs, but only as long as the client is working and/or going to school a

specified number of hours per week and provides proof. The big drawback to FAFFY was that it made rent payments directly to the lessor, and did not make any money payments directly to the client as Voluntary Jurisdiction does, leaving clients with no money for food, clothing and other necessities. That has changed, and FAFFY now rebates to clients directly the difference between the maximum rent of $773 and the actual rent the client pays. Like Voluntary Jurisdiction, FAFFY is available to age 21. Although there are still some advantages to Voluntary Jurisdiction, such as better Medicaid, FAFFY' s combination of rent payment and cash makes it worth a closer look.

If you have a client who receives SSI, it is better for that client to be on FAFFY instead of Voluntary Jurisdiction. As previously mentioned, Voluntary Jurisdiction makes payments directly to the client and these funds are considered income. FAFFY, on the other hand, makes payments directly to vendors (landlords) and not to clients. Since FAFFY money goes directly to the vendor, it is not considered income and therefore, should not affect your client's SSI benefits.

Clark County Social Services (Step Up) is the Independent Living Services contractor chosen by Clark County to administer both the FAFFY and Voluntary Jurisdiction Programs in Southern Nevada. Our office has a legal advocate that works exclusively with FAFFY/Voluntary Jurisdiction clients. Contact the Pro Bono Project at probono@lacsn.org to be put in contact with her.

Status Quo

If your client is 18, still in high school and likes living in his foster home, he or she can choose to keep things as they are. The client would still have the same caseworker, the permanency review hearings would continue and the foster parent would continue to receive foster board payments. This is possible because AB350 amended the definition of "child" to include those who have not graduated from high school. Once the client graduates, he/she must choose between Voluntary Jurisdiction and FAFFY.

Be aware that adolescents often "mess up," and miss school or lose their jobs. It is important to continue to advocate for your client when the caseworker tries to terminate his independent living agreement as punishment for his "youthful errors".

Nevada's Foster Youth Bill of Rights and Sibling Bill of Rights

AB 154 (codified in N.R.S. § 432.500 to N.R.S. § 432.550), Nevada's Foster Youth Bill of Rights, was enacted during the 2011 Legislative Session and went into effect on October 1, 2011. The Bill of Rights essentially bundled rights afforded to foster children into one easily accessible point of reference. A copy of the poster and brochures can be downloaded and printed from the State of Nevada, Division of Child and Family Services ("DCFS") website at:

http://dcfs.nv.gov/uploadedFiles/dcfsnvgov/content/Programs/CWS/IL/BOR_Poster.pdf
and

http://dcfs.nv.gov/uploadedFiles/dcfsnvgov/content/Tips/Brochures/FosterChildBORbrochure.pdf

There are two versions of the Bill of Rights Brochure, one being geared toward younger children. Please feel free to distribute a copy of the Bill of Rights to your client in addition to their placement provider.

To further recognize the rights of foster youth, the Nevada Legislature enacted Assembly Bill 393 (AB 393), Nevada's Foster Youth Sibling Bill of Rights, during the 2013 legislative session. The Sibling Bill of Rights, effective October 1, 2013, promotes the importance of foster youth maintaining their sibling relationships. Assembly Bill 393 is codified in N.R.S. §§ 432.525 and 432.530. A copy of the brochure can be downloaded and printed from the State of Nevada, Division of Child and Family Services' ("DCFS") website at:

http://dcfs.nv.gov/uploadedFiles/dcfsnvgov/content/Programs/CWS/IL/FINALsiblingBORPoster.pdf

Nevada's Foster Youth
BILL OF RIGHTS

The State of Nevada, Division of Child and Family Services (DCFS) recognizes the following rights of children and youth in foster care. These rights are intended to guide the child welfare agencies and their providers in the delivery of care and services to foster youth with the commitment to permanency, safety and well being. This Bill of Rights was developed by DCFS in collaboration with *Nevada LIFE*, the statewide youth advisory board.

You have the right to live:

- ★ *In a safe, healthy, stable and comfortable environment*
- ★ *In a home best suited to meet all your needs*
- ★ *Have adequate and appropriate clothes*
- ★ *Have access to healthy food*

You have the right to be placed:

- ★ *In a home with your siblings whenever possible*
- ★ *In a home of a relative or stay in your own home if safe and appropriate*

You have the right to:

- ★ *Be treated with dignity and respect*
- ★ *Be free from corporal punishment, such as spanking or hitting*
- ★ *Not be locked in any room, physically restrained or be isolated*
- ★ *Be free from unreasonable searches of your personal stuff or other invasions of your privacy*
- ★ *Send and receive unopened mail (unless a judge says someone else can open your mail)*
- ★ *Go to religious services and activities of your choice or refuse to attend religious services*
- ★ *Maintain a bank account and manage your own personal money*
- ★ *Participate in extracurricular, cultural and personal enrichment activities and to have access to transportation, if realistic, for these activities*
- ★ *Make contact with case workers, attorneys, probation officers, CASAs, and anyone else involved in your case (openly or confidentially)*
- ★ *To talk to your caseworker at least once a month*
- ★ *Participate and be included in your case plan and attend court hearings*
- ★ *Be told about any changes in your case plan or placement*
- ★ *Complete an identification kit which includes your photo and other identifying details you would like to include that will be kept in your file by the child welfare agency, please ask your caseworker for more information*
- ★ *To attend Independent Living Program classes (if you are 15 or older)*
- ★ *To work or be trained to work, if 16 or older and it has been authorized by your case worker*

You have family rights too:

- ★ *You can visit and contact your brothers and sisters, parents and other family members (unless a judge says you cannot)*

You have medical and health rights:

- ★ *You must receive appropriate medical care, which includes seeing a doctor, dentist, eye doctor and talking to a counselor*
- ★ *To take psychotropic medications only if it meets all requirements of Nevada law (NRS 432B.197)*

You have school rights. You should be able to:

- ★ *Attend the school that you were enrolled in before coming into foster care, if it is realistic and in your best interests*
- ★ *Have your educational records transferred quickly when you need to attend a new school*
- ★ *Go to school every day*
- ★ *Attend after school and extracurricular scholastic activities that you were enrolled in before being placed in foster care*
- ★ *Get help with school if you need it*
- ★ *Not be identified as a foster child to other students by any one employed at your school*
- ★ *Have access to information about educational opportunities like scholarships for college and vocational school (if you are 16 years or older)*

If you believe that your rights have been violated or that you are being treated differently because of your race, ethnicity, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability or exposure to HIV, you have the right to have any violations resolved. You can talk about this with:

- ★ *Your foster care provider*
- ★ *An employee of the foster home*
- ★ *An employee of the juvenile court*
- ★ *Your guardian ad litem and or CASA*
- ★ *Your attorney*
- ★ *Your case worker or other employee of the child welfare agency*

Your foster care provider may impose reasonable restrictions on the time, place and manner in which you can exercise your rights if they determine that any restrictions are necessary to keep the order, discipline or safety of the foster home.

As enrolled into Nevada law by Assembly Bill 154 effective October 1, 2011

State of Nevada
Department of Health and Human Services
Division of Child and Family Services

Nevada's Foster Youth

SIBLING BILL OF RIGHTS

The State of Nevada, Division of Child and Family Services (DCFS) recognizes the following rights of children and youth in foster care. These rights are intended to guide the child welfare agencies and their providers in the delivery of care and services to foster youth with the commitment to permanency, safety and well-being. This Sibling Bill of Rights was developed by DCFS in collaboration with *Nevada LIFE*, the statewide youth advisory board and expands the rights of children in foster care (NRS.432.525 – NRS.432.530).

WHEREAS, The importance of sibling relationships is widely recognized; and

WHEREAS, Siblings share similar history, heritage and culture which is important to preserve: and

WHEREAS, Separation from siblings is a significant and distinct loss, and the effect of that loss can be lessened by frequent contact between siblings; and

WHEREAS, Maintaining sibling relations fosters a sense of continuity and stability for children placed in foster care; and

WHEREAS, Every foster child deserves to know and be actively involved in the lives of his or her siblings, absent extraordinary circumstances.

You have the right:

- ★ To be placed with your siblings, whenever possible, if your siblings are also placed outside of your home.
- ★ To be placed in close proximity to your siblings to facilitate frequent contact.
- ★ To contact and visit your siblings, except if prohibited by a judge, and to have contact arranged on a regular basis and on holidays, birthdays and other significant life events.
- ★ Not to have contact or visitation with a sibling withheld as a form of punishment.
- ★ To be informed of any plan to change, or change in, the placement of a sibling, including, without limitation, a plan to change the placement of a sibling resulting from adoption, reaching the age of 18 years or otherwise leaving a foster home.
- ★ To be supported by the Child Welfare Agency in your efforts to maintain relationships with your siblings.

If you believe that your rights have been violated or that you are being treated differently because of your race, ethnicity, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability or exposure to HIV, you have the right to have any violations resolved. You can talk about this with:

- ★ *Your foster care provider*
- ★ *An employee of the foster home*
- ★ *An employee of the juvenile court*
- ★ *Your guardian ad litem and or CASA*
- ★ *Your attorney*
- ★ *Your case worker or other employee of the child welfare agency*
- ★ *DCFS Systems Advocate Unit 775-684-4453*

Your foster care provider may impose reasonable restrictions on the time, place and manner in which you can exercise your rights if they determine that any restrictions are necessary to keep the order, discipline or safety of the foster home.

As enrolled into Nevada law by Assembly Bill 393 effective October 1, 2013

State of Nevada
Department of Health and Human Services
Division of Child and Family Services

CHAPTER NINE
Representing Preverbal Children

From birth to five years, children establish the foundation for their future development.[42] Abuse, neglect, and removal from primary caregivers profoundly affect the growth and development of very young children.[43] As the largest group to enter the child welfare system,[44] very young children involved in dependency court proceedings face many disadvantages, traumas, and losses during a critical time of early brain development.[45]

Age is strongly associated with (1) the likelihood of the child entering the child welfare system; (2) how long the child will remain in out-of-home placements; (3) how the child exits the system; and (4) the likelihood of the child reentering the system.[46] Accordingly, a child's age significantly determines his experience in the child welfare system.

Understanding that representing a young child is challenging, the American Bar Association adopted the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. The ABA Model recommends that an attorney for a child, after making a determination that the child has diminished capacity[47], should make a substituted judgment determination.[48] A substituted judgment determination is not the same as determining the child's best interest; it involves determining what the child would decide if he were able to make an adequately considered decision.[49] When determining a substituted judgment position, you should take into consideration the child's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case, and the use of the least restrictive or detrimental alternative available.[50]

To effectively represent your client and strengthen your ability to handle ethical dilemmas that may arise, your advocacy for a young child should be (a) child-centered, (b) research-informed, (c) permanency-driven, and (d) holistic.[51] These four elements of representation are mutually dependent and each must be followed to produce the best outcomes for very young children in dependency proceedings.

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[42] Candice L. Maze, J.D., American Bar Association, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, ABA Center on Children and the Law, October, 2010.
[43] *Id*.
[44] U.S. Department of Health and Human Services, Administration for Children and Families: *The AFCARS Report.* Washington, D.C.: Administration on children, Youth and Families, Children's Bureau, 2015. Available at http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport23.pdf.
[45] *Supra*, n. 42.
[46] *Id*.
[47] American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, August, 2011 at Sec. 7(e) – Commentary [hereinafter ABA Model Act]
[48] *ABA Model Act*, at Sec. 7(d).
[49] *ABA Model Act*, at Sec. 7(d) – Commentary.
[50] *Id*.
[51] *Supra*, n. 42.

Child-Centered Advocacy[52]

Child-centered advocacy requires making the child's viewpoint the focus of all advocacy. The child's needs and interests, not the adults' or professionals, must be the center of all advocacy. Child-centered advocacy includes the following:

- Learn the child's history:
  - What kind of prenatal care did the mother receive?
  - What kind of early medical and dental care did the child receive?
  - Has the child received immunizations and required health screenings?
  - What kind of relationship does the child have with his parents or other key caregivers?
  - Who cared for the baby before the child entered the system?
  - What child care or early education has the child experienced?
  - What are the familiar comforting items in the child's life?;
- Get to know the child – getting to know your client requires you to visit the client regularly and interacting with him during those visits;
- Ensure the child receives:
  - An initial health screen upon entering care;
  - A comprehensive health assessment within 30 days in care;
  - Proper immunizations; and
  - Appropriate dental care;
- Observe the child's interactions with substitute caregivers (primary relationships):
  - Are the child's needs being met?
  - Does the caregiver interact in a loving, gentle manner with the child?
  - Is the caregiver warm and nurturing?
  - Does the caregiver smile and speak kindly to the child – does the child smile and/or gurgle back?
  - Does the child use the caregiver as a point of reference – physically or verbally connecting with the caregiver after exploration?;
- Understand the parent-child relationship:
  - Does the mother gently soothe the child's cries or is she rough and dismissive?
  - Does the father join in the visits?
  - Is the parent making an effort to interact?
  - When the child requires redirection – is this handled with understanding or is the parent rough and demeaning to the child?;
- Become familiar with the child's environment:
  - In the child's home, are there developmentally appropriate books and toys?
  - Does the child have a safe place to sleep, eat, and play?
  - Does the child have weather-appropriate clothing?
  - Are the child's cultural background and experiences reflected in the environment (i.e., foods, languages, customs)?

[52] *Id*.

- Ensure the child appears before the judge during the process – the presence of the very young child keeps everyone focused on that child.

Research-Informed Advocacy[53]

Research-informed advocacy requires the attorney to understand early childhood development and how child abuse and neglect can disrupt healthy physical, social, emotional, and cognitive development. You, as the child's attorney, should ensure that the child is screened for developmental delays and is actually linked to a service or treatment while in care. In Nevada, children should be referred to Early Intervention Services.

Permanency-Driven Advocacy[54]

Permanency-driven advocacy requires the attorney to make permanency for their client a priority from day one. Often in child abuse and neglect cases, the early events of the case predict the final disposition. You should keep all people focused on visitation, placement, and services. Permanency should be revisited monthly. It should not be driven by the court process, but by the child's needs and the parent's ability to provide a safe and stable home for the child.

To ensure that permanency is obtained in a timely-manner, concurrent planning should be promoted when it is appropriate. For concurrent planning to be effective, the caregivers (relatives and/or foster families) must be trained and educated to understand the dual requirement of committing long-term to the child, while also supporting the parent(s) toward reunification. In addition, it is essential for the caseworker to search for potential relative placements at the beginning of the case to avoid unnecessary, multiple placement changes for the child.

Consistent contact between the parent and the child improves the chances for reunification and promotes a healthy attachment between the child and his parent(s). When safe, both physically and emotionally, frequent visits and contact between a very young child and his parent(s) are essential to permanency. Unless clearly harmful to a very young child, visitation three-to-four times a week in as normal a setting as possible, is essential to healing the parent-child relationship and setting up the best possible chance for reunification.

Contact between parents and children should be:

- Frequent (multiple time a week);
- Long enough to allow a range of experiences for the parent and child (e.g., diaper changing, playing, feeding);
- Connected to daily activities (e.g., going to the park, taking a walk, visiting the pediatrician);

[53] *Id*.
[54] *Id*.

- In the least restrictive, most natural, home-like setting; and
- Conducive to meaningful parent-child interaction.

Identifying and engaging fathers and paternal relatives of children in the child welfare system is a challenge for all professionals. Case managers and others often overlook or disregard fathers as uninterested or incapable of caring for a very young child. While this sometimes is the case, many fathers and paternal relatives are willing and able to be a resource for the child, whether as a permanent or temporary placement, a source of information about the child (e.g., medical history, other relatives), or by providing financial, emotional, or other support.

Advocates must ensure diligent searches for fathers occur early in the process and fathers are offered equal opportunities to parent their children, if interested and capable and no safety concerns exist. When fathers or paternal relatives cannot be located early, despite diligent efforts, the child advocate must ensure the agency continues its search as the case progresses and new information becomes available.

Holistic Approach[55]

The holistic approach to child advocacy requires the attorney to ensure the child's needs are met through the entire dependency system. Much of what happens in a child welfare court case takes place outside the judge's presence. Thus, advocacy outside the courtroom is as important as advocacy inside the courtroom.

Just as you must appear for all court hearings, it is equally important that you appear for meetings. Formal and informal permanency, treatment, and service meetings take place regularly, often without involving the child's advocate. There is a perception that very young children are not impacted by the child welfare process. Subsequently, without their representative present at hearings and meetings, their perspective and individual needs and interests are not considered during planning efforts and decision making. It is up to you to be the child's voice and to zealously advocate for his needs and interests.

Often in dependency court, the child's attorney is the one consistent professional involved with the case from the beginning. The attorney knows the case history better than anyone and should connect with caregivers, caseworkers, childcare/early education providers, CASAs, and others involved in the child's case. You should educate service providers, new case managers, and teachers about the child and make sure these professionals understand the child's special needs and attachments.

As an attorney representing a very young or preverbal child, you can greatly influence the child's health, development, and well-being.[56] An effective advocate can, and should, set or maintain the child on a healthy developmental path and effectively guide the child towards a speedier permanency – whether it is reunification or some other permanency

[55] *Id*.
[56] *Id*.

option, such as adoption.[57]

Representing preverbal children in dependency proceedings can be very challenging. However, an attorney who commits to child-centered, research-informed, permanency-driven, and holistic advocacy can promote the best outcomes for every child that he represents. If you have questions regarding representing a preverbal child, please feel free to contact you mentor at the Children's Attorneys Project for advice or assistance.

[57] *Id.*

CHAPTER TEN
Advocating with Others on Your Client's Case

CPS and DFS Caseworkers

Lawyers who represent children in abuse and neglect proceedings will have frequent contact with social workers. It is always advantageous for the client if the lawyer develops a good working relationship with the CPS or DFS caseworker. The caseworker, as a representative of DFS, has legal custody of the child. Since the caseworker is the legal custodian of the child, asking the caseworker to inform the parties that you have the right to access your client's records or other related records, or that you wish to see your client is often quicker and easier than getting a court order for access. Consulting the caseworker at the beginning of the case can get you information that is not reproduced in written reports. You should also periodically speak with the caseworker to stay up to date on the events in your client's life. Frequently, you can often achieve your client's goals just by talking with the caseworker.

Many caseworkers have a heavy caseload and work long hours. It is important to keep this in mind when working with them. Often, they are as frustrated with the system and its lack of resources as you are. Accommodating the caseworker when possible and being aware of the constraints he or she is under can go a long way in developing and achieving your client's goals.

Despite the fact that the caseworker is your client's legal custodian, he or she cannot control your representation of your client. The caseworker cannot dictate when, where, or how often you may see or speak to your client. The caseworker cannot define or limit the scope of your representation. The worker also has the responsibility of informing foster parents that they cannot control your access to your client either and that they are under the same constraints as DFS in regard to allowing you access to your child and any information in their possession or control regarding your client.

Court Appointed Special Advocates (CASA)

N.R.S. § 432B.500 makes provision for the appointment of a guardian *ad litem*, or volunteer CASA, for children involved in abuse and neglect proceedings. According to the statute, the CASA must:

> "Represent and protect the best interests of the child until excused by the court; thoroughly research and ascertain the relevant facts of each case for which the guardian ad litem is appointed, and ensure that the court receives

an independent, objective account of those facts; meet with the child wherever the child is placed as often as is necessary to determine that the child is safe and to ascertain the best interests of the child; explain to the child the role of the guardian ad litem and, when appropriate, the nature and purpose of each proceeding in the case; participate in the development and negotiation of any plans for and orders regarding the child, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner; appear at all proceedings regarding the child; inform the court of the desires of the child, but exercise independent judgment regarding the best interests of the child; present recommendations to the court and provide reasons in support of those recommendations; request the court to enter orders that are clear, specific and, when appropriate, include periods for compliance; review the progress of each case for which the guardian ad litem is appointed, and advocate for the expedient completion of the case;..."[58]

It is a good idea to consult with the CASA about your mutual client for several reasons. First, as between you and the volunteer, the CASA is the one most likely to see the child on a regular, frequent basis and therefore will have the latest information about him to share with you. Second, their increased contact with the child and the child's foster family or natural family makes CASAs an excellent resource to identify issues that need to be addressed by the attorney. Third, it is good to know what the CASA will say to the court before a hearing: you and the CASA may be able to collaborate and present a unified front before the judge (that is, what the child wants is consistent with the child's best interests). Finally, the CASA may be able to help you achieve your client's goals. For example, if the child wants sibling visits but the caseworker cannot work visits into the schedule, the CASA may be able to facilitate the visits by agreeing to transport the child and/or supervise the visitation, if that is necessary.

Foster Care Agencies

There are many private foster care agencies for the placement of children that employ their own caseworkers. Some of the agency caseworkers are very involved in a case, others are more hands off. In theory, the DFS caseworker and the foster care agency caseworker will cooperate with each other. If a child is placed in a therapeutic foster home, the lawyer for the child likely will have more contact with the foster care agency caseworker than the DFS caseworker. However, regardless of placement in a privately licensed foster home, DFS retains custody of the child. There are several different private foster care licensing agencies in Las Vegas: the ones that lawyers for children encounter on a regular basis include: SAFY, Eagle Quest, Olive Crest, Bamboo Sunrise, Apple Grove, 180 Community Wellness and Genesis.

[58] N.R.S. § 432B.500 (2)(a)-(j).

It benefits your client if you will take the time to introduce yourself to the foster parents and the agency that licenses them. Developing rapport with the foster parents so that they are amenable to working with you to resolve your client's concerns may be one way to advocate for your client.

Therapists and Teachers

Families involved in abuse and neglect proceedings can require a multitude of services. In addition to meeting on a regular basis with the caseworker assigned to the case, various members of the family, including your client, are frequently involved in different family therapy sessions and classes. Occasionally you may find it necessary to contact some of these service providers to resolve a concern voiced by your client. You are free to do so. Having a cordial relationship with these people can result in a free flow of information from the service provider to the lawyer.

Permanency Worker

If the parental rights of the biological parents are relinquished or terminated, the client becomes available for adoption. In addition to their overall duties of achieving permanency for children, a Permanency Worker is responsible for completing the Social Summary that is required before an adoption can be completed. If a case moves to the adoption stage, you should find out who the Permanency Worker is and introduce yourself. You can ensure that the child's placement file does not "fall through the cracks" by periodically checking in with the Permanency Worker.

Before a family will be actively recruited to adopt a child, a Social Summary must be completed. A Social Summary is a lengthy document that attempts to tell the child's history in a clear, cohesive way. The Social Summary contains the social and medical history, including history of medical diseases and disorders, alcohol and drug use, for the natural parents and other family members. It also includes behaviors and incidents involving the child. Increasingly, children are tested for fetal alcohol syndrome and other genetic disorders: the results of these tests are included in the Social Summary. The Social Summary generally takes months to complete and consequently can delay the adoption of a child. <u>If your client wishes to be adopted, you will want to urge the court to order that the Social Summary be completed as soon as possible, even before parental rights are terminated.</u>

Delays in processing adoption paperwork means a child languishes in the foster care system for an indefinite period – as the client ages into adolescence buffeted from placement to placement, he becomes less "desirable" to potential adoptive parents and more difficult to place. A delayed or incomplete Social Summary may lead to a failed

adoption as the prospective adoptive parents opt for a younger child. Therefore, when your client wants to be adopted, it is critical that you encourage an early start on the Social Summary so that it is thorough and completed in a timely fashion – preferably at or near the time of the TPR.

Delays in adoption after the TPR has occurred do happen even when adoptive resources were identified and ready to adopt. The Children's Attorneys Project has negotiated with DFS on appropriate timelines and a schedule for implementation of the timelines that was memorialized in an informal "consent decree", in lieu of a class action lawsuit filed on behalf of Clark County's children in foster care. Therefore, if your client's adoption appears to be languishing, contact your mentor at the Children's Attorneys Project for advice and assistance.

CHAPTER ELEVEN
Indian Child Welfare Act (ICWA)

In response to the alarming number of Indian[59] children being removed from their homes, in 1978, the United States Congress passed the Indian Child Welfare Act (ICWA). Congress' intent was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes[60] and families".[61] ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

When ICWA applies to a child's case, the child's tribe and family will have an opportunity to be involved in decisions affecting services for the Indian child. A tribe or a parent can also petition to transfer jurisdiction of the case to their own tribal court. ICWA sets out federal requirements regarding removal and placement of Indian children in foster or adoptive homes and allows the child's tribe to intervene in the case. ICWA also applies to status offenses or juvenile delinquency proceedings if any part of the proceedings results in the need for placement of the child in foster care, pre-adoptive or adoptive placements, or termination of parental rights. ICWA does not apply to divorce proceedings, intra-family disputes, or cases under tribal court jurisdiction.

Indian children involved in state child custody proceedings are covered by ICWA. In order for ICWA to apply, the involved child must be an Indian child as defined by the law. ICWA defines an "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe".[62] Under federal law, individual tribes have the right to determine eligibility, membership, or both. In order for ICWA to apply, the child must be a member of or eligible for membership in a federally recognized tribe.

Tribes must be notified immediately if there is any reason to suspect a child may have tribal affiliation or be eligible for tribal affiliation. Many Indians in Nevada may be members of tribes located outside of Nevada, or members of Indian tribes that are not federally recognized. If the tribe is unknown, the Bureau of Indian Affairs (BIA) must be notified.

---

[59] The term "Indian" is used in this chapter to conform to the language of the ICWA, and refers to those of Native American heritage.

[60] The term "tribe" is used in this chapter to refer to all Indian tribes, bands, Alaska Native villages, nations, or other organized groups or communities that are eligible, due to their native status, for services or special programs operated by the federal government.

[61] 25 U.S.C. § 1902.

[62] 25 U.S.C. § 1903.

Office of Public Affairs
U.S. Department of the Interior
1849 C Street, N.W.
MS-4004-MIB
Washington, D.C. 20240
Tel# (202) 208-3710
Fax# (202) 501-1516
feedback@bia.gov

Eastern Nevada Agency
Bureau of Indian Affairs
2719-4 Argent Avenue
Elko, NV 89801
Tel# (775) 738-5165

Western Nevada Agency
Bureau of Indian Affairs
311 East Washington Street
Carson City, NV 89701
Tel# (775) 887-3500
Fax# (775) 887-3531

A tribe may intervene as a party at any time in any foster care or TPR proceeding involving an Indian child.[63] When a tribe is a party, the court cannot ignore the tribe's interests in the Indian child, even where the tribe's interests conflict with those of the parents.

Even in cases where the tribe declines involvement, states are required to provide active efforts to families. The definition of active efforts is left open in the Indian Child Welfare Act; however, there are federal guidelines to help clarify the definition of active efforts.[64] Active efforts are intended primarily to maintain and reunite an Indian child with his family or tribal community and to constitute more than reasonable efforts.[65] Furthermore, active efforts should begin the moment the case or investigation begins.[66]

Under ICWA, the caseworker must make several considerations when handling the case, including:

- Providing active efforts to the family;
- Identifying a placement that follows ICWA's preference provisions: (1) A member of the child's extended family; (2) Other members of the Indian child's tribe; or (3) Other Indian families; and
- Notifying the child's tribe and parents of all proceedings; and

[63] 25 U.S.C. § 1911(c) and N.R.S. § 432B.425.
[64] Guidelines for Implementing the Indian Child Welfare Act – United States Department of the Interior, December 2016.
[65] *Id*.
[66] *Id*.

- Working actively to involve the child's tribe and parents in the proceedings.

ICWA is an integral policy framework on which tribal child welfare programs rely. It provides structure and requirements for how public and private child welfare agencies and state courts view and conduct their work to serve tribal children and families. It also acknowledges and promotes the role that tribal governments play in supporting tribal families, both on and off tribal lands. However, as is the case with many laws, proper implementation of ICWA requires vigilance, resources, and advocacy. Therefore, it is recommended that if your client may be an Indian child, you should notify the Children's Attorneys Project immediately.

CHAPTER TWELVE
Other Useful Information and Resources

Child Haven

Child Haven is located at 701 N. Pecos Road, Las Vegas, Nevada (on the north end of the Clark County Family Court campus). The telephone number for Child Haven is 702-455-5390.

Clark County Community Resource Centers

In an effort to coordinate programs for children and families and provide easy access to services, child welfare, juvenile justice, children's mental health and early childhood services are co-located in offices in each of five geographic service areas-referred to as Central, West, South, East and North. To accomplish this, the Nevada Division of Child and Family Services, the Clark County Department of Family Services (DFS), and Clark County Department of Juvenile Justice Services (DJJS) provide five parallel service areas, defined by zip code. To find the DFS office nearest to your client or your client's family, find the applicable zip code below.

West - Persons living in one of the following zip codes:
89004, 89103, 89113, 89117, 89118, 89124, 89128, 89129, 89134, 89135, 89138, 89139, 89141, 89144, 89145, 89146, 89147, 89148, 89149, 89166, 89178, 89179.

Central Neighborhood Family Services Center
121 S. Martin Luther King Blvd.
Las Vegas, NV 89106
(702) 455-7200

East - Persons living in one of the following zip codes
89109, 89110, 89119, 89120, 89121, 89142.

East Neighborhood Family Services Center
4180 S. Pecos Road
Las Vegas, NV 89121
(702) 455-8806

North - Persons living in one of the following zip codes:
89030, 89031, 89032, 89081, 89084, 89085, 89086, 89087, 89115, 89130, 89131, 89143, 89156, 89191.

Martin Luther Family Services Center
2424 Martin Luther King
North Las Vegas, NV 89030
(702) 455-0740

South - Persons living in one of the following zip codes:
89005, 89011, 89012, 89014, 89015, 89044, 89074, 89122, 89123, 89052.

South Neighborhood Family Services Center
522 E. Lake Mead Pkwy.
Henderson, NV 89015
(702) 455-7900

Central - Persons living in one of the following zip codes:
89101, 89102, 89104, 89106, 89107, 89108, 89130

Central Neighborhood Family Services Center
121 S. Martin Luther King Blvd.
Las Vegas, NV 89106
(702) 455-7200

Resource Organizations (This is a partial listing only and is not an endorsement intended or implied)

American Bar Association Center on Children & the Law
(202) 662-1720
https://www.americanbar.org/groups/child_law.html

Child Welfare League of America
(202) 688-4200
www.cwla.org

Children's Defense Fund
(800) 233-1200
cdfinfo@childrensdefense.org
www.childrensdefense.org

Children's Rights Incorporated
(212) 683-2210
info@childrensrights.org
www.childrensrights.org

National Center for Youth Law
(510) 835-8098
www.youthlaw.org

National Council of Juvenile and Family Court Judges
(775) 507-4777
contactus@ncjfcj.org
www.ncjfcj.org

Youth Law Center
(415) 543-3379
info@ylc.org
www.ylc.org

Internet Resources (This is a partial list only and not an endorsement intended or implied)

American Bar Association Center on Children and the Law
https://www.americanbar.org/groups/child_law.html

The mission of the ABA Center on Children and the Law is to improve children's lives through advances in law, justice, knowledge, practice and public policy. Their website provides information on their publications, annual report, periodicals, pro bono work, policies, and lawyer standards. In addition, the website hosts a child protection law reform bulletin board, discussion groups, and useful links.

Child Welfare Information Gateway
https://www.childwelfare.gov/topics/adoption/

The Child Welfare Information Gateway is a comprehensive resource on all aspects of adoption, including infant, intercountry, and special needs adoption. Their website provides information on online databases, online publications, what publications can be ordered from them and related links.

Child Welfare League of America
http://www.cwla.org/

The Child Welfare League of America (CWLA) leads and engages its network of public and private agencies and partners to advance policies, best practices and collaborative strategies that result in better outcomes for children, youth and families that are vulnerable.

Children's Defense Fund
http://www.childrensdefense.org/

The mission of the Children's Defense Fund is to Leave No Child Behind and to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. Their website provides information about CDF's current projects and issues as well as lists their publications.

National Association of Counsel for Children
http://www.naccchildlaw.org/
The National Association of Counsel for children is a non-profit child advocacy and professional membership association dedicated to improving the lives of children and

families through legal advocacy. The NACC provides training and technical assistance to attorneys and other professionals, serves as a public information and professional referral center, and engages in public policy and legislative advocacy.

National CASA Association
http://www.casaforchildren.org

The mission of the National Court Appointed Special Advocate Association, together with its state and local member programs, is to support and promote court-appointed volunteer advocacy so every abused or neglected child in the United States can be safe, have a permanent home and the opportunity to thrive. Their website features topical articles as well as their library, forums, and training.

National Council of Juvenile and Family Court Judges
http://www.ncjfcj.org

The mission of the National Council of Juvenile and Family Court Judges mission is to provide all judges, courts, and related agencies involved with juvenile, family, and domestic violence cases with the knowledge and skills to improve the lives of the families and children who seek justice. Their website provides information on their publications and how to order them and about their projects.

Representing Children in Abuse and Neglect Cases

Since 1958
LEGAL AID CENTER
of Southern Nevada

APPENDICES TO THE MANUAL FOR PRO BONO ATTORNEYS

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Order Shortening Time

Order to Permit Child Witness to Testify by Alternative Methods

Stipulation and Order to Place Matter on Calendar

PEXMT
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept. No.:
CLIENT,	)	
DOB: Date of Birth	)	
AGE: Age YEARS OLD	)	
	)	
A MINOR.	)	
	)	

EX PARTE MOTION FOR AN ORDER SHORTENING TIME

COMES NOW, Attorney, Esq., of Firm, by and on behalf of CLIENT, a minor, and pursuant to EDCR 5.513, hereby requests that this Court shorten the time in which to hear CLIENT's Motion for Child Witness to Testify by Alternative Methods.

This application is based upon the pleadings and papers on file and the Affidavit of Counsel attached to this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 5.513 of the Eighth Judicial District Court Rules gives this court the authority to shorten time for the hearing of a motion.

> **Rule 5.513. Orders shortening time for a hearing.**
> (a) Unless prohibited by other rule, statute, or court order, a party may seek an order shortening time for a hearing.
> (b) An *ex parte* motion to shorten time must explain the need to shorten the time. Such a motion must be supported by affidavit.
> (c) Absent exigent circumstances, an order shortening time will not be granted until after service of the underlying motion on the nonmoving parties. Any motion for order shortening time filed before service of the underlying motion must provide a satisfactory explanation why it is necessary to do so.
> (d) An order shortening time must be served on all parties promptly. An order that shortens the notice of a hearing to less than 10 calendar days may not be served by mail. In no event may a motion be heard less than 1 judicial day after the order shortening time is filed and served.
> (e) Should the court shorten the time for the hearing of a motion, the court may direct that the subject matter of any countermotion be addressed at the accelerated time, at the original hearing time, or at some other time.

Good cause for setting the Motion is set forth in the Affidavit of Counsel attached to this Motion. Accordingly, it is respectfully requested that the hearing on the Motion be set at the Court's earliest available date.

Respectfully submitted this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

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

1. I am a licensed practicing attorney with Firm appointed by the Court to represent subject minor, CLIENT.

2. I entered my appearance in this case on Date.

2. An adjudicatory trial is scheduled to be heard on Date, regarding the Petition filed on or about Date, that alleges abuse and/or neglect by natural mother, Mother and natural father, Father.

4. The District Attorney, Attorney, has notified Counsel that he/she intends on subpoenaing CLIENT to testify at the trial.

5. According to therapist, Therapist, it will be a traumatic experience for CLIENT if he must testify in the presence of his father.

6. In order to resolve the important matter raised in the foregoing Motion and due to the trial quickly approaching, it is requested that this Ex Parte Motion to hear CLIENT'S Motion to Testify by Alternative Methods be heard as soon as reasonably possible, on an Order Shortening Time.

By:_____

SUBSCRIBED AND SWORN to before me
this Day day of Month, Year.

_____
NOTARY PUBLIC in and for said
County and State

PFFRI
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.:

FINDINGS OF FACT, RECOMMENDATION, AND ORDER FOR SIBLING VISITATION

This matter having come before the above-entitled Court, on Date, with Attorney, Esq., Deputy District Attorney, appearing on behalf of the Department of Family Services (DFS); Attorney, Esq., appearing on behalf of the natural mother, Mother; Attorney, Esq., appearing on behalf of the natural father, Father; Attorney, Esq., of Firm, appearing on behalf of the subject minors, CLIENT 1 and CLIENT 2; and Case Manager, Case Manager, Department of Family Services, also appearing. The Court having read the papers and pleadings on file and heard oral argument makes the following:

FINDINGS:

1. That the Court has complete jurisdiction in the premises, both as to the subject matter and the parties hereto.
2. CLIENT 1 and CLIENT 2 have been under the jurisdiction of the Juvenile Court.
3. Mother is the natural mother to CLIENT 1 and CLIENT 2.
4. Father is the natural father to CLIENT 1 and CLIENT 2.

5. The permanency plan adopted by this Court is Termination of Parental Rights and adoption for these children.
6. CLIENT 1 is currently placed with maternal family. They are an adoptive resource.
7. CLIENT 2 is currently placed in a foster home.
8. NRS 432B.580 requires a court approved sibling visitation plan when siblings are not placed together.
9. It is in the best interest of CLIENT 1 and CLIENT 2 that regular sibling visits be allowed pursuant to NRS 432B.580(4).

IT IS HEREBY RECOMMENDED that:

1. In accordance with NRS 432B.580(4), CLIENT 1 and CLIENT 2 shall visit, in-person, at least once per month at a time and place mutually agreed upon between their respective families. Any and all in-person visits shall take into account the siblings' school, social, and vacation dates.
2. If a planned in-person visit cannot take place as scheduled, the parties shall communicate as soon as the need for the change in scheduling becomes apparent, and shall arrange for an alternate date and time, if possible.
3. In the event that any of the siblings relocate from Clark County, Nevada, they shall have unlimited telephone, computer and written contact with one another when age appropriate, as detailed below. The respective families will encourage and support in-person visits when the same can be facilitated.
4. CLIENT 1 and CLIENT 2, when age appropriate, shall have unlimited telephone, computer, and written contact with each other, including, but not limited to, cards, letters, emails, Skype, Facetime and other social media.
5. Nothing in this Order is intended to preclude additional visits between CLIENT 1 and CLIENT 2.
6. Visits shall commence upon the entry of this Order and shall continue until such time that CLIENT 1 reaches the age of majority or until further order of this Court.

7. The Department of Family Services shall notify any future prospective adoptive parents and their attorneys that a Sibling Visitation Order exists.

8. In accordance with NRS 127.171, the Department of Family Services shall notify the Court which is conducting the adoption proceedings that this Sibling Visitation Order exists and that it shall be incorporated into any and all future Decrees of Adoption.

DATED this Day day of Month, Year.

_____
JUVENILE HEARING MASTER

NOTICE OF RIGHT TO FILE AN OBJECTION TO HEARING MASTER'S RECOMMENDATIONS

Objections to Hearing Master's Recommendations are governed by EDCR 1.46. No Recommendations by the Hearing Master will become effective until expressly approved by the Presiding Juvenile District Court Judge. The Applicant has five (5) days after service of this Hearing Master's Recommendations to Apply to the Presiding Juvenile District Court Judge for a hearing. Failure to properly file an Application for Hearing shall result in An Order of Approval being entered by the District Court.

CERTIFICATE OF FACSIMILE

I HEREBY CERTIFY that on the Day day of Month, Year, I served a copy of the Recommendation and Order and Notice of Right to Appeal via facsimile to the following:

Attorney, Esq., Deputy District Attorney,
Fax No.
Attorney for the Department of Family Services

Attorney, Esq.,
Fax No.
Attorney for the Natural Mother, Mother

Attorney, Esq.,
Fax No.
Attorney for the Natural Father, Father

Case Manager, Case Manager, Department of Family Services
Fax No.

_____
An Employee of
Firm

ORDER OF APPROVAL

The Court having reviewed the above foregoing Master's Recommendation and there being no timely objection having been filed thereto; or having received the objection thereto, as well as any other papers, testimony and argument related thereto and good cause appearing, the above Findings of Fact and Recommendations of the Hearing Master are hereby approved and such Findings of Fact and Recommendations are hereby made an Order of the Eighth Judicial District Court of Nevada, Juvenile Division.

DATED this Day day of Month, Year.

_____
DISTRICT COURT JUDGE

Submitted by:

_____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **FINDINGS OF FACT, RECOMMENDATION, AND 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

PMRAO
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.:

HEARING MASTER'S RECOMMENDATION AND ORDER FROM HEARING ON DATE

This matter having come before the above-entitled Court, on Date, with Attorney, Esq., Deputy District Attorney, appearing on behalf of the Department of Family Services; Attorney, Esq., appearing on behalf of the natural mother, Mother; Attorney, Esq., appearing on behalf of the natural father, Father; Attorney, Esq., of Firm, appearing on behalf of the subject minors, CLIENT 1 and CLIENT 2; and Case Manager, Case Manager, Department of Family Services, also appearing. The Court having read the papers and pleadings on file and heard oral arguments makes the following recommendations:

IT IS HEREBY RECOMMENDED that in accordance with NRS 432B.390(7), the Department of Family Services shall identify a home and ensure these siblings are placed together.

IT IS FURTHER RECOMMENDED that in accordance with NRS 432B.580(4), these siblings shall visit with one another, in-person, at least once a week at a time and place mutually

/ / /

agreed upon by the parties. Said visitation shall continue until placement of the siblings has been effected.

DATED this Day day of Month, Year.

_____
JUVENILE HEARING MASTER

NOTICE OF WAIVER TO FILE AN OBJECTION TO HEARING MASTER'S RECOMMENDATIONS

Objections to Hearing Master's Recommendations are governed by EDCR 1.46. No Recommendations by the Hearing Master will become effective until expressly approved by the Presiding Juvenile District Court Judge. The Applicant has five (5) days after service of this Hearing Master's Recommendations to Apply to the Presiding Juvenile District Court Judge for a hearing. Failure to properly file an Application for Hearing shall result in An Order of Approval being entered by the District Court.

In this case, all parties are in agreement as to the hearing master's recommendations, and thereby waive the right to object and affirm they have received a copy of the instant HEARING MASTER RECOMMENDATION AND ORDER FROM HEARING ON DATE.

By:_____
ATTORNEY, ESQ.
Nevada Bar No.
Address
Attorney for the Subject Minors

By:_____
ATTORNEY, ESQ.
Nevada Bar No.
Deputy District Attorney Juvenile
601 N. Pecos Road, Room 470
Las Vegas, Nevada 89101
Attorney for Department of Family Services

By:_____
ATTORNEY, ESQ.
Nevada Bar No.
Address
Attorney for Natural Mother, Mother

By:_____
ATTORNEY, ESQ.
Nevada Bar No.
Address
Attorney for Natural Father, Father

ORDER OF APPROVAL

The Court having reviewed the above foregoing Master's Recommendations and there being agreement as to the recommendations and waiver of the right to file objections, there is good cause to make the above Hearing Master's Recommendations an Order of the Eighth Judicial District Court of Nevada, Juvenile Division.

DATED this Day day of Month, Year.

_____
DISTRICT COURT JUDGE

Submitted by:

_____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **HEARING MASTER'S RECOMMENDATION AND ORDER FROM HEARING ON DATE** 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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Nevada Bar No. Bar #
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EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 3,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 4,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 5,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.: HEARING REQUESTED

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 A FINDING OF LACK OF REASONABLE EFFORTS FOR FAILURE TO PLACE SIBLINGS TOGETHER

COMES NOW the minor children, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5 by and through their attorney, Attorney, Esq., of Firm, and hereby files this Motion for a Finding of Lack of Reasonable Efforts for Failure to Place Siblings 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: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

MEMORANDUM OF POINT AND AUTHORITIES

I. STATEMENT OF FACTS

CLIENT 1, CLIENT 2, and CLIENT 3 were taken into police custody on or about Date. They were removed and placed into the Clark County Department of Family Services' ("DFS") custody due to charges of inadequate shelter and inadequate supervision. Their mother, Mother, and her boyfriend were homeless, had no income, lived and kept the children in a camper truck with no electricity or running water, used marijuana and methamphetamine, and left drug paraphernalia within reach of the children. On Date, CLIENT 1, CLIENT 2, and CLIENT 3 were placed together in a DFS foster home.

On Date, Mother gave birth to CLIENT 4. CLIENT 4 was born drug exposed. As a result, CLIENT 4 was removed from Mother on Date and placed in the care of DFS. CLIENT 4 was placed in a DFS foster home separate from CLIENT 1, CLIENT 2, and CLIENT 3.

On Date, Mother gave birth to CLIENT 5. CLIENT 5 was also born drug exposed. As a result of Mother's substance abuse, CLIENT 5 was removed from her care on Date, and placed in DFS custody. Subsequently, DFS placed CLIENT 5 in the same foster home as his brother CLIENT 4. Even though they are separated, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5 all visit with each other every Saturday in order to maintain a bond as siblings.

On Date, the Eighth Judicial District Court ordered that a permanency plan of reunification with Mother be pursued concurrently with recruitment of an adoptive placement for CLIENT 1, CLIENT 2, CLIENT 3 and CLIENT 4. Subsequently, on Date, the Eighth Judicial District Court ordered that a permanency plan of reunification with Mother be pursued concurrently with recruitment of an adoptive placement for CLIENT 5.

II. LEGAL ARGUMENT

A. This Court has original and exclusive jurisdiction over this matter.

The Court has original jurisdiction over this matter pursuant to N.R.S. 3.223:

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, 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 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 the minors into protective custody pursuant to a Petition – Abuse/Neglect filed by the Clark County Department of Family Services under N.R.S. 432B.470, this Court acquired subject matter jurisdiction over this case and personal jurisdiction over CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5.

B. <u>The Nevada Legislature intended to create a "presumption" rather than a mere preference, and therefore the siblings must be placed together unless that presumption has been rebutted.</u>

In accordance with the mandatory presumption set forth in N.R.S. 432B.550, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5 should be placed together. N.R.S. 432B.550(6)(a) specifically mandates:

> 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.

Black's Law Dictionary defines a "presumption" as:

> A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption.[1]

Thus, in accordance with the Black's Law Dictionary definition, the inference drawn in N.R.S. 432B.550(6)(a) requires that when a child in need of protection has siblings, the court

[1] Black's Law Dictionary (10th ed. 2014), presumption.

must automatically infer that it is in the child's best interest to be placed with his siblings. Further, Black's Law Dictionary instructs that such an inference may only be defeated when the "adversely affected party overcomes it with other evidence."[2] Therefore, an opposing party must present contrary evidence to demonstrate that it is not in a child's best interest to remain with his siblings.

Accordingly, the Nevada Supreme Court simplified the meaning of a presumption in *Clark County District Attorney, Juvenile Division v. Eighth Judicial District Court ex rel. County of Clark* by distinguishing a preference from a presumption.[3] The Court emphasized, when statutory language contains a presumption, presumptive placement can only be denied if the adverse party shows actual detriment to the child from that placement.[4] The Court then described a statutory "preference," the much weaker standard, by noticing that when "statutory language only creates a preference . . . the district court must consider the child's best interest."[5]

To determine the meaning of an ambiguous provision, the Nevada Supreme Court directs this Court to identify the underlying intent of the Legislature in creating the provision.[6] Although the plain meaning of "presumption" is unambiguous, this Court may look at the Nevada Legislative history to ensure that the meaning is not contrary to the legislative intent.[7]

In 2005, the Nevada Legislature amended NRS 432B.550 to establish the presumption and eliminated a lower standard which merely instructed that the siblings be placed together whenever "practicable." As Assemblywoman Barbara Buckley explained, children are often separated because one child is more desirable than the other.[8] The Nevada Legislature passed this amendment to avoid such situations where a foster parent is choosing the child with the least issues and separating him from his siblings.[9] Legislative Advocate, Michael Alastuey,

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[2] *Id.*
[3] *Clark County Dist. Atty., Juvenile Div. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 337, 342–43 (2007) (distinguishing a preference from a presumption in order to clarify the holding of *Matter of Guardianship of N.S.*, 122 Nev. 305 (2006) which confused a preference for a presumption).
[4] *Id.*
[5] *Id.* at 343.
[6] *Public Employees' Benefits Prog v. Las Vegas Metropolitan Police Dept*., 124 Nev. 138, 147 (2008).
[7] *Sims v. Eighth Judicial Dist. Court ex rel. County of Clark*, 125 Nev. 126, 130 (2009).
[8] Nev. Assem. Comm. on Health and Human Servs., Hearing on A.B. 42, 73d Reg. Sess. (March 7, 2005).
[9] *Id.*

noted in these Assembly Hearings that this amendment supersedes prior law which simply dictated that siblings be placed together whenever practicable.[10] Moreover, Alastuey explained that this amendment "clearly contemplates that there could well be circumstances where [it] is, in fact, not practicable" to place siblings together, but in the children's best interests.[11] Finally, Lucille Lusk, Chairman of Nevada Concerned Citizens, explained that although a presumption may not unequivocally mandate a court to place siblings together, it does require that "it be done when it can be done."[12] As such, by following the prior "whenever practicable" standard, this Court would be erroneously ignoring the plain meaning of the statute and the Legislature's specific intent to strengthen the assertion that a sibling relationship should remain intact whenever *possible*.

Here, DFS has presented no evidence to show that the siblings will suffer any injury by being placed together. The presumption set out in N.R.S. 432B.550(6)(a) requires the adverse party to present evidence which shows actual harm to the siblings if they are placed together. As the Nevada Supreme Court emphasized, the question is not whether the foster home is the "better home," but rather, whether placing the siblings together would be detrimental to their interests.[13]

Moreover, DFS has created the exact scenario that the legislature contemplated. As Assemblywoman Buckley clarified, the concern in keeping the former "whenever practicable" language of N.R.S. 432B.550 was that infants and more desirable children would get selected for adoption and the older or less desirable children would be rejected. In this case, DFS has placed CLIENT 4 and CLIENT 5, the two youngest siblings who have been in the foster system since birth, into an adoptive resource. The remaining three siblings have been left in a foster home that is not an adoptive resource. Keeping the siblings apart raises the concern that DFS plans to use the lack of sibling bond as justification for allowing the two youngest to be adopted

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[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *In re Guardianship of N.S.*, 122 Nev. 305, 313 (2006).

separately. This is the exact situation the Legislature feared and amended N.R.S. 432B.550 to prevent.

In this case, DFS has already disregarded the presumption that the siblings stay together when they placed the siblings in separate foster homes. Now DFS is attempting to move forward with the adoption of CLIENT 4 and CLIENT 5 in their current foster home, a home that refuses to also accept CLIENT 1, CLIENT 2, and CLIENT 3. This adoption is improper as it would continue to violate the presumption and permanently separate the siblings. DFS has not yet recruited an adoptive resource that can comply with the statutory presumption and take all five of the siblings.

The sibling relationship is one of the most important relationships that a child will develop in life. The siblings have an interest in being placed together and have developed a strong sibling bond. DFS has provided no objective evidence that refusing to finalize an adoption for two siblings instead of searching for a resource for all five siblings would be harmful. Although counsel understands that it may be difficult to find a placement for five siblings, it is still imperative that reasonable efforts be made to ensure that siblings remain together. The fact that it may be difficult or inconvenient for DFS to find an appropriate placement is not enough to overcome the siblings' right to preserve the love and mutual support system maintained through their relationship with each other.

Counsel respectfully submits that no evidence on the record overcomes the presumption that siblings must be placed together. Therefore, the best interest presumption cannot be overcome and the siblings must be placed together.

C. <u>It is in the siblings' best interest to be placed together.</u>

The Nevada Legislature and the Nevada Supreme Court have long recognized that the overarching consideration in the placement and custody of children is that the children's best interests be achieved.[14] As such, the Nevada Supreme Court noted that "preservation of the

[14] *Clark County Dist. Atty., Juvenile Div. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 337, 346 (2007). *See also* NRS 125C.0035(1) (determining custody in separation or divorce); NRS 128.105 (terminating parental rights); NRS 432B.480(1)(b)(2) (determining custody in abuse/neglect); all noting that in such child welfare proceedings, the best interests of the child should be the primary or even sole consideration.

familial relationship is an important consideration in determining what is in the child's best interest for placement purposes."[15] It is Nevada's express public policy, codified in N.R.S. 432B.550(6)(a), to presume that co-placement with siblings is in the best interest of the child. There is an affirmative duty on State and County child welfare agencies to keep sibling groups intact.

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 with one another and thus positively contribute to each other's emotional and social development. Sibling connections in the foster care system are even more significant because they represent stability that is no longer available from the removed children's parents.[16]

Courts have noted the importance of maintaining a sibling bond. The court in *L. v. G.*, noting that sibling relationships provide a context for social development, 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 from 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."[17] In *Obey v. Degling*, the court noted that "[y]oung brothers and sisters need each other's strengths and association in their everyday and often common experiences, and to separate them, unnecessarily, is likely 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."[18] When these children become adults, they will have only each other to depend on.

In this case, the siblings are deeply bonded. They have weekly visitation with each other and frequently go on outings together. Even the younger siblings recognize that they are siblings

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[15] *Clark County Dist. Atty*., 123 Nev. at 348.
[16] The Fostering Connections to Success and Increasing Adoptions Act, P.L. 110-351.
[17] *L. v. G*., 497 A.2d 215, 220 – 21, 203 N.J. Super. 385 (Ch. Div. 1985).
[18] *Obey v. Degling*, 337 N.E.2d 601, 602 (N.Y. 1975).

and the significance that holds. The siblings, especially CLIENT 1, express a desire to be placed and adopted together. The Nevada Legislature has recognized the detrimental effects that separating siblings can have on a minor's well-being. Therefore, in accordance with N.R.S. § 432B.550, counsel respectfully submits that it is of vital importance to the best interests of the siblings to mandate that they be adopted together in the same home.

D. <u>The Foster Youth Bill of Rights requires siblings to be placed together whenever possible.</u>

In 2011, the Nevada Legislature enacted Assembly Bill 154 ("AB 154"), a comprehensive Bill of Rights for foster youth that took effect in October 2011. Incorporated in N.R.S. 432.500 et seq., AB 154 is the law of the State of Nevada.

N.R.S. 432.500 et seq. guarantees foster children an important right pertinent to this motion: the right to be placed with their siblings whenever possible. N.R.S. 432.530 provides in pertinent part:

> With respect to the placement of a child in a foster home by an agency which provides child welfare services, the child has the right:
>
> 1. To live in a safe, healthy, stable and comfortable environment, including, without limitation, the right:
>
> . . .
>
> (d) To be placed with his or her siblings, whenever possible, and as required by law, if his or her siblings are also placed outside the home.

Here, DFS received an order on Date, requiring that they recruit an adoptive resource for CLIENT 1, CLIENT 2, CLIENT 3 and CLIENT 4. Nearly a year later, DFS has not found an adoptive resource that can accommodate even all four of these children, much less CLIENT 5, who was included in the subsequent order in Date. Counsel respectfully submits that by doing so, DFS has violated the siblings' rights under Section 4 of AB 154 and therefore acted unreasonably.

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E. <u>Where the Department of Family Services fails to make reasonable efforts to place siblings together, the Court has the authority to make a finding of lack of reasonable efforts.</u>

When children are taken from their parents and placed into protective custody, Nevada presumes that keeping them together is in their best interest. DFS has a duty to make reasonable efforts to place siblings together. N.R.S. 432B.393 addresses the Court's authority to make a determination of whether reasonable efforts were made and provides in pertinent part:

> 5. In determining whether reasonable efforts have been made pursuant to subsection 4, the court shall:
> (a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;
> (b) Consider any input from the child;
> (c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;
> (d) Consider the diligence and care that the agency is legally authorized and able to exercise, including, without limitation, the efforts to create an in-home safety plan;
> (e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;
> (f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue;
> (g) Consider whether any of the efforts made were contrary to the health and safety of the child;
> (h) Consider the efforts made, if any, to prevent the need to remove the child from the home and to finalize the plan for the permanent placement of the child;
> (i) Consider whether the provisions of subsection 6 are applicable; and
> (j) Consider any other matters the court deems relevant.

As addressed in this Memorandum of Points and Authorities, DFS has fallen short in their efforts to help these children maintain their sibling relationship. This Court should find it unreasonable that DFS has not placed the siblings together so, as they develop, they can continue to bond with each other. DFS has failed to help these children maintain their sibling support system, which is itself contrary to "reasonable efforts."

III. CONCLUSION

In recognizing the importance of the sibling bond, the Legislature amended N.R.S. 432B.550(6)(a) to create a presumption that it is in the child's best interest to remain with his siblings. DFS has presented no evidence to overcome this presumption and show that it is

detrimental for the siblings to be placed together. As such, in achieving this Legislative goal, this Court must place siblings together.

DFS has failed to find an adoptive resource for the siblings for a year, and have trammeled on the rights of the siblings by doing so. Accordingly, CLIENT 1, CLIENT 2, CLIENT 3, CLIENT 4 and CLIENT 5, respectfully request that this Court find that the Department of Family Services has failed to make reasonable efforts to place the siblings together.

Respectfully submitted this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

AFFIDAVIT OF COUNSEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **MOTION FOR A FINDING OF LACK OF REASONABLE EFFORTS FOR FAILURE TO PLACE SIBLINGS 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

PMOT
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 3,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.: HEARING REQUESTED

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MOTION FOR AN ORDER TO SHOW CAUSE WHY THE DEPARTMENT OF FAMILY SERVICES SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR FAILING TO COMPLY WITH THIS COURT'S WRITTEN ORDER ON DATE

COMES NOW the minor children, CLIENT 1, CLIENT 2, and CLIENT 3, by and through their attorney, Attorney, Esq., of Firm, and submits this Motion for an Order to Show Cause why the Department of Family Services should not be held in contempt of court for failing to comply with this Court's written Order on Date.

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This Motion is made and based upon the following Memorandum of Points and Authorities, the affidavit attached hereto, the exhibit attached hereto, 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: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY

CLIENT 1, CLIENT 2, and CLIENT 3 were reunified with their parents on Date. On Date, this Court signed an Order stating that the Department of Family Services (hereinafter "Department") is to notify the minors' attorney at least 3 business days prior to any anticipated move, absent an emergency. *See Exhibit "A"*. In addition, the Court ordered the Department to provide reasonable notice and invitation to any meetings regarding these subject minors. On Date, a reunification Child and Family Team Meeting (hereinafter "CFT") was held by the caseworker and two supervisors without notice or invitation given to the minors' attorney. Further, the minors were moved from their placements and placed with their parents without prior notice given to their attorney. The exclusion of the minors' attorney at the CFT meeting was intentional and willful. Moreover, the conduct by the caseworker and any supervisor who approved these egregious actions should be held in contempt of court for deliberately violating a court order.

II. STATEMENT OF FACTS

CLIENT 1, CLIENT 2, and CLIENT 3 were removed from their parents care and placed into protective custody on Date. All three minors were declared wards of this Court and placed with a paternal aunt and uncle. On Date, the paternal relatives informed the caseworker they could no longer care and supervise CLIENT 1. As a result, CLIENT 1 was released to his parents on a trial home visit while his sisters remained with the paternal aunt. At the first permanency review hearing held on Date, the Court expressed concerns regarding the parents' ability to secure stable housing for all the children. To prevent placing CLIENT 1 in a foster home and considering his age, CLIENT 1 remained in the parents care while his sisters remained with the paternal aunt.

On or about Date, CLIENT 1 was removed from his parents again and placed into a foster home. On Date, a Modification of a Court Order hearing was held and the Court again expressed concerns regarding the parents' ability to care and properly supervise CLIENT 1 and therefore, ordered that CLIENT 1 remain in his current foster home. On Date, the minors'

attorney received a phone message from the caseworker stating that the Department plans to "possibly move CLIENT 1 with his parents and then discuss where we are with reunifying the girls." On Date, the minors' attorney contacted the paternal aunt to schedule an appointment to see the girls in her home.

On Date, the caseworker visited CLIENT 2 and CLIENT 3 at school to ask if they wanted to return home with their parents. The caseworker did not mention to the children a date or time for the reunification nor did she contact their attorney to give her an opportunity to discuss this issue in further detail with the children. The following day, at approximately 11:00 am, in response to receiving a phone call from the father, the paternal aunt contacted the caseworker and asked if it was true that the children were being reunified with the parents. The caseworker confirmed that reunification with the parents was going to occur.

The paternal aunt informed the caseworker that the minors' attorney had contacted her to see the children. Additionally, the paternal aunt questioned whether the minors' attorney was aware of the Department's intention of reunifying the children. In response, the caseworker stated she would contact the minors' attorney. On the contrary, the attorney was notified on Monday, Date upon hearing a voice message left by the caseworker on the previous Friday at approximately 6:13 pm after the CFT reunification meeting was held. In the message, the caseworker stated the meeting "basically happened at the last minute...you may not be thrilled that we had a meeting without you but it was something beyond my control." In addition, she stated they will "move forward on Monday on bringing the kids home."

Upon hearing this message, the minors' attorney left a message with the caseworker to contact her immediately. Fortunately, the paternal aunt contacted the minors' attorney and informed her the children were moved on Friday as opposed to Monday as stated in the voice message by the caseworker. According to the paternal aunt, she had to inform both girls they would be going home to their parents that day. Although both girls were initially happy to hear they would be returning home, both began crying to the paternal relatives. Seeing that the caseworker was not going to assist in facilitating the move of the children, the paternal relatives

gathered a few belongings for the girls and transported them to meet with their mother at a bus stop.

Approximately three weeks prior to this move, the caseworker visited CLIENT 1 at school and asked if he wanted to return home. At no time did the caseworker contact CLIENT 1 nor his attorney to discuss reunification time frames and transitioning him back into his parents care. CLIENT 1 became aware that he could return home when his parents informed him a meeting occurred with the caseworker who approved placement with the parents. Immediately, CLIENT 1 gathered a few belongings and took a bus to his new home.

III. LEGAL ARGUMENT

A. The Department of Family Services did not act with reasonable care in reunifying CLIENT 1, CLIENT 2, and CLIENT 3 with their parents.

This Court has placed CLIENT 1, CLIENT 2, and CLIENT 3 in the custody of the Department of Family Services. In doing so, the Court has entrusted it with their care and well-being. By habit and practice, it has established the expectation that the Department act in a manner reasonably calculated to protect children from harm, and to work in cooperation with other professionals involved with the child. In the immediate instance, the Department did not act with reasonable care in transitioning the children into their parents care. The Department failed to consult with the minors' attorney or the paternal relatives with regards to such an important issue such as placement.

Pursuant to N.R.S. 432B, the Department of Family Services has an obligation to care for the emotional health and well-being of children placed in their care. In the case at hand, the Department has acted without any regard as to how their decisions effect the minors emotionally and academically. When the children were initially placed with the paternal relatives, all three minors were delayed significantly in school. Since being in the care of the paternal aunt, CLIENT 2 and CLIENT 3 have improved dramatically in their academics. Further, CLIENT 2 has expressed how much she enjoys school and has worked very hard on her school work to ensure she is right on track.

When CLIENT 2 was informed she would be reunified with her parents, she expressed her concern about attending a new school. Despite her concerns, the caseworker decided to go forward with the move without consulting any other individuals involved with these children. There was no transition plan in place to discuss how the children would be withdrawn from their current school and enrolled into a new school.

Due to the haste decision by the Department to move the children, as of the writing of this Motion, the children have not been enrolled at their new school. Furthermore, according to the paternal aunt, after only two days, the father contacted her asking the paternal aunt if she would consider taking CLIENT 2 back into her care so that CLIENT 2 could finish the school year. Father admitted to the paternal aunt that if the children were moved after the school year, as opposed to immediately, he would have been better prepared for them. He could have obtained beds for the girls and enrolled them all in school. More concerning is the father stated that CLIENT 2 spent the entire weekend crying in the closet because she was concerned about school. Had the caseworker invited the paternal relatives and minors' attorney to the meeting, many of these concerns could have been addressed prior to moving the children.

Concerned how the children felt about reunifying with their parents, the minors' attorney visited the children immediately in their new apartment. In speaking with the children they stated that they are happy to be placed with their parents. However, they expressed that they wish they knew ahead of time they would be returning to their parents.

The children were shocked when they discovered they were going home that day. Unfortunately, because the caseworker failed to inform the children or their attorney of the Department's intention to reunify, the minors did not have an opportunity to say goodbye to teachers or friends, pack all their belongings, and emotionally prepare themselves for their change in placement. Essentially, the children came home from school packed a few things and were sent to live with their parents after being out of the home for almost a year.

The Department has failed to recognize the impact such an abrupt move could have on these children and the paternal relatives. For the last year, these relatives have cared for these children without any financial assistance from the Department. Despite their commitment to

these children, the Department did not have the decency to notify the family ahead of time the intention to reunify the family until the paternal aunt contacted the caseworker the day of the move.

B. <u>The Department of Family Services is in Contempt of Court.</u>

This Court has the authority to find that the Department of Family Services is in contempt of court. N.R.S. 22.010 states that disobedience or resistance to any order of the court constitutes contempt. As the facts set forth above, the Department of Family Services has disobeyed a specific court order. Pursuant to N.R.S. Chapter 22, this Court can enforce an order by subsequent contempt proceedings. This Court may impose a fine not exceeding $500, or imprisonment not exceeding 25 days, or both on a person determined guilty of contempt.[1]

On Date, District Court Judge, Judge, signed an Order stating the Department of Family Services is to notify the subject minors' attorney, Attorney, of any change in placement, three (3) business days prior to the change in placement, absent an emergency. *See Exhibit "A"*. In addition, the Order states that the Department of Family Services provide reasonable notice and invitation to participate in any meetings regarding the subject minors that will involve team discussions or decisions relating to placement. *See Exhibit "A"*.

In the case at hand, no conditions existed which necessitated the move on an emergency basis. Further, when the minors' attorney asked the caseworker why she was not notified of the reunification meeting, the caseworker stated she did not have time to contact the attorney. However, in speaking with the mother, the meeting was initially scheduled for Thursday, Date but then rescheduled to Friday, Date in the afternoon. Additionally, the caseworker was informed by the paternal aunt at approximately 11:30am on Friday morning, that the minors' attorney must not be aware of the reunification plans. The caseworker responded she would contact the attorney.

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[1] N.R.S. 22.100.

The minors' attorney was available all day Friday afternoon and did not receive an invitation to the meeting or given notice of the intent to move her clients. It seems apparent that the caseworker purposely held the meeting without the desire to include the minors' attorney. Obviously there had been several conversations between the caseworker and the parents in an attempt to schedule a reunification meeting. Yet, the caseworker failed to include the minors' attorney in these discussions despite a court order. When the minors' attorney questioned why she was not included at the reunification meeting, the caseworker responded she did not have time to give notice. Additionally, the caseworker stated that she had the support of two supervisors at the meeting and if minors' attorney had a problem with the decision made by the Department, then minors' attorney could inform the Judge next week at the review hearing.

The order of the court was designed to prevent the exact situation that has happened here. Had the required notice been provided, the parties could have come together prior to the move to discuss the transition plan for the children. Further, had the caseworker informed the minors' attorney that reunification was to occur on Friday, any concerns or reservations by the children could have been somewhat mitigated, simply as a result of speaking with their attorney beforehand. Most importantly, had the caseworker given proper notice to the minors' attorney, any emotional trauma could have been prevented or alleviated.

Consequently, Caseworker, the caseworker in charge of the case, Supervisor, the supervisor who approved these actions, and any other person who authorized these actions should be held in contempt of court for its disregard of this Court's order.

IV. REQUEST FOR RELIEF

It is hereby respectfully requested that:

1. Caseworker, Supervisor, and any other person who authorized the change in placement for CLIENT 1, CLIENT 2, and CLIENT 3 without providing prior notice to the minors' attorney at least three (3) business days prior to the anticipated move as ordered by the Court, be held in contempt of court;

2. Caseworker, Supervisor**,** and any other person who authorized the reunification of CLIENT 1, CLIENT 2, and CLIENT 3 with their parents, without giving proper notice and invitation to minors' attorney to the reunification CFT meeting as ordered by the Court, be held in contempt of court;

3. Caseworker, Supervisor, and any other person found in contempt of court be assessed the full penalty of $500.

4. That a new caseworker be assigned to CLIENT 1, CLIENT 2, and CLIENT 3 immediately.

Respectfully submitted this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

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 TO SHOW CAUSE WHY THE DEPARTMENT OF FAMILY SERVICES SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR FAILING TO COMPLY WITH THIS COURT'S WRITTEN ORDER ON DATE** 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”

PMOT
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT,** DOB: Date of Birth AGE: Age YEARS OLD A MINOR.	Case No.: Dept. No.: HEARING REQUESTED

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 RELATIVE PLACEMENT

COMES NOW, Attorney, Esq., of Firm, by and on behalf of CLIENT, a minor, and submits this Motion for Relative Placement. 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: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

A. Background of CLIENT's Removal

CLIENT, 10, was placed into protective custody on Date, as a result of physical abuse allegations against his natural mother, Mother.[1] On or about Date, CLIENT was made a ward of the Court and placed in the custody of the Department of Family Services ("DFS").

Upon removal, CLIENT was placed in a foster home. While in his foster placement, CLIENT had consistent visits with Mother. These visits were supervised by CLIENT's maternal grandmother, Maternal Grandmother. Initially, Maternal Grandmother requested placement of CLIENT; however, CLIENT wanted to remain in his current foster home so he could deal with the trauma of the physical abuse that he had suffered. Maternal Grandmother, respecting CLIENT's wishes, did not further pursue the placement, and CLIENT remained in his foster home.

In Month / Year, Mother was hospitalized for liver and kidney failure. During this time, CLIENT visited his mother in the hospital daily. Maternal Grandmother, who wanted to be a strong support for her daughter and CLIENT, was also present for the visits. Unfortunately, in Month / Year, Mother passed away.

Following the death of Mother, Maternal Grandmother, again, requested that CLIENT be placed in her home. This was due, in large part, to CLIENT's change of heart – he now wanted to be placed with his maternal grandmother. Unfortunately, DFS did not approve the placement because Maternal Grandmother's adult son lived in her home and he had a felony conviction from eight years ago. The conviction was for possession of a stolen vehicle.

B. Maternal Grandmother and Maternal Uncle's Background Information

From the time CLIENT was an infant, Maternal Grandmother has always been an integral part of his life. CLIENT and his mother lived with the maternal grandparents for six

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[1] CLIENT's father, Father, passed away of a drug overdose in Year.

years.[2] During those years, Maternal Grandmother helped take care of CLIENT. She watched him while his mother was at work. She picked him up from school. Maternal Grandmother took CLIENT on family trips and spent the summers with him. CLIENT developed a close bond with his grandmother. She was his "second mother."

After the death of his maternal grandfather, CLIENT began looking to his uncle, Maternal Uncle, as the central male figure in his life. CLIENT and Maternal Uncle developed a deep bond. In fact, Maternal Uncle is one of the few people who can calm CLIENT down when he becomes upset.[3]

Maternal Uncle has a felony conviction for possession of a stolen vehicle which occurred over eight years ago. However, since being released from prison and granted parole in Year, Maternal Uncle has not been involved in any criminal proceedings and has worked hard to clean up his life. He obtained employment and recently married. He has a two year old son, whom CLIENT gets along with very well. Although Maternal Uncle and his family currently live with Maternal Grandmother, he and his wife are in the process of purchasing their own home. Even though Maternal Uncle will eventually be living separate from CLIENT, he wishes to find a home that is close to Maternal Grandmother so he can continue to be involved in CLIENT's life.

CLIENT wants to live with his maternal grandmother so he can continue to receive the love, support, and security that he gets from his family.

II. LEGAL ARGUMENT

A. IT IS IN CLIENT'S BEST INTERESTS TO BE PLACED WITH MATERNAL GRANDMOTHER, WHOM THE COURT SHOULD GIVE PREFERENCE TO BECAUSE OF THE EXISTING FAMILIAL CONNECTION.

The Nevada Legislature and the Nevada Supreme Court have long recognized that the overarching consideration in the placement and/or custody of children is the best interests of

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[2] CLIENT's maternal grandfather, Maternal Grandfather, passed away in Year.
[3] CLIENT has had past behavioral issues, and is currently being assessed for Autism/Aspergers based on his various developmental delays.

the child.[4] In *Clark County District Attorney, Juvenile Division v. Eighth Judicial District Court*, the Nevada Supreme Court explained, "…the child's best interest *necessarily* is the main consideration for the district court when exercising its discretion concerning placement decisions."[5] Additionally, the Nevada Supreme Court noted in *State Div. of Child and Family Services v. Eighth Judicial Dist. Court,* that, although it is not expressly included in the Nevada Statutes or Regulations, "DCFS is responsible for acting in the best interests of the children."[6]

Furthermore, the Nevada legislature determined that, in cases where a child has been found in need of protection, the Court should look to several factors in determining placement but give preference to relatives.

NRS 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:
> . . .
>
> (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.

In this case, Maternal Grandmother (and Maternal Uncle) are within the fifth degree of consanguinity and therefore, fall into the category of familial preference. Moreover, according to NRS 432B.550(4), the Court may consider whether a child resided with a particular relative for three (3) years or more. Here, CLIENT lived with Maternal Grandmother for over six years. She often helped her daughter care for CLIENT and was an integral part of his life.

As NRS 125C.0035(4)(g) suggests, the physical, developmental and emotional needs of a child should be given substantial weight in determining a child's best interests.[7] Maternal

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[4] *Clark County Dist. Atty. v. Eighth Judicial District Court,* 167 P.3d 922, 928 (Nev. 2007). *See also*, N.R.S. 125C.0035(1) (determine custody in separation or divorce), 128.105 (terminate parental rights), and 432B.480(1)(b)(2) (determine custody in abuse/neglect), all noting that in such child welfare proceedings, the best interests of the child should be the primary or even sole consideration.

[5] *Clark County Dist. Atty,* 167 P.3d at 928. (emphasis added)

[6] *State Div. of Child and Family Services, Dept. of Human Resources v. Eighth Judicial Dist. Ct.,* 119 Nev. 655, 660, 81 P.3d 512, 515 (2003).

[7] NRS 125C.0035(4) (Although this statute enumerates "best interest" factors in regards to the custody of children whose parents have ended their relationship, become separated or dissolved their marriage, the factors provide a helpful guideline for the court to use in determining the child's best interest in many different forums, as the

Grandmother will provide CLIENT with the individual support and guidance necessary to positively affect his physical, developmental and emotional needs. CLIENT has had past behavioral issues, and is currently being assessed for Autism/Aspergers based on his various developmental delays. Maternal Grandmother has expressed that she will do what is necessary to ensure that CLIENT gets the appropriate treatment and services. She has already researched about Autism support groups and various therapies, and she is prepared to transport CLIENT to whatever school deemed appropriate based on the possible diagnoses and assigned Individualized Education Plan ("IEP").

Further, Maternal Grandmother has stated that she would like to eventually move forward with obtaining guardianship of CLIENT. Maternal Grandmother herself grew up in the foster care system, and does not want to see CLIENT languish in such an environment. In order for CLIENT's physical, developmental and emotional needs to be met, CLIENT should be placed with his grandmother. She is prepared to keep him safe and secure. She knows that CLIENT depends on her to take care of his needs.

In reviewing all factors relating to CLIENT's placement with his grandmother, it is evident that CLIENT's best interests would be served in honoring the familial placement preference and ordering the placement of CLIENT with Maternal Grandmother.

B. MATERNAL UNCLE'S CONVICTION DOES NOT FALL INTO THE CATEGORIES OF CRIMES AUTOMATICALLY DENIED, AND THEREFORE, HIS CONVICTION MAY BE WAIVED TO ALLOW FOR CLIENT TO BE PLACED WITH MATERNAL GRANDMOTHER.

NAC 127.420(2) provides that there are certain enumerated crimes which will result in an immediate denial of an application to become a prospective adoptive parent. Specifically, NAC 127.420(2)(k) states:

> 2. An application to adopt must be denied if:
> . . .
>
> (k) Except as otherwise provided in subsection 3, the agency which provides child welfare services determines that, based upon a substantiated investigation,

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Nevada Supreme Court utilized this provision (formerly NRS 125.480) in *Clark Cty Dist. Atty.,* which similarly analyzed the best interest of a child in abuse and neglect proceedings.)

the applicant or a member of the applicant's household who is 18 years of age or older:

(1) Has been convicted of a crime involving harm to a child;
(2) Has charges pending against him or her for a crime involving harm to a child; or
(3) Has been arrested and is awaiting final disposition of the charges pending against him or her for a crime involving harm to a child.

Here, Maternal Uncle has never committed a crime against a child. He was convicted of felony possession of a stolen vehicle. This conviction, over eight (8) years ago, in no way relates to the provisions set forth in NAC 127.420(2)(k). NAC 127.420(2)(k) only denies approval of an application when an individual has been arrested for a crime against a child.

Additionally, NAC 127.420(2)(l) provides in pertinent part:

2. An application to adopt must be denied if:
. . .

(l) The applicant or a member of the applicant's household who is 18 years of age or older has charges pending against him or her for a felony conviction involving, or has been arrested and is awaiting final disposition of possible or pending charges against him or her involving:

(1) Child abuse or neglect;
(2) Spousal abuse;
(3) Any crime against children, including child pornography;
(4) Any crime involving violence, including rape, sexual assault or homicide, but not including any other physical assault or battery; or
(5) Physical assault, battery or a drug-related offense, if the assault, battery or drug-related offense was committed within the last 5 years.

To reemphasize, Maternal Uncle has never committed abuse, neglect or an actual crime against a child. Maternal Uncle has never been arrested for any crimes involving spousal abuse, rape, sexual assault, homicide or drug-related offenses. As previously mentioned, his offense was possession of a stolen vehicle, which occurred over eight (8) years ago. As such, because the offenses listed in sections (k) and (l) do not apply to Maternal Uncle, and he would not be subject to an automatic denial.

Finally, subsection 3 explains that a person who does not fall into the provisions of paragraphs (k) and (l), but has been involved in a misdemeanor, gross misdemeanor, or even a felony, only needs to obtain an additional approval to be considered for placement as an adoptive parent. In particular, NAC 127.420(3) clarifies:

> 3. An agency which provides child welfare services shall not, without the approval of the Administrator of the Division or the designee of the Administrator, assist in the adoption of a child by a person who the agency determines has been convicted of one or more felonies, gross misdemeanors or misdemeanors. The Administrator of the Division or the designee of the Administrator shall not approve such an adoption if the applicant has been convicted of a felony described in paragraph (1) of subsection 2. . .

To protect a child's welfare, offenses such as violent crimes, crimes against children, and recent violations all produce automatic denials. However, subsection 3 gives an individual, who is not automatically denied by subsection 2, the opportunity for a waiver. Since Maternal Uncle's offenses do not give rise to denial pursuant to this regulation, his conviction may be waived. Accordingly, if Maternal Uncle's conviction would not bar him from possibly being allowed to adopt a child, then surely it should not hinder CLIENT from being placed with his grandmother merely because Maternal Uncle resides in her home.

III. CONCLUSION

Although CLIENT is only nine years old, he has suffered the loss of both parents and the trauma of being placed in foster care due to physical abuse. He now wishes to be placed with his maternal grandmother with whom he has an incredible bond and who helped raise him since he was a baby.

As stated above, Maternal Grandmother falls under the familial preference provided by NRS 432B.550. Further, Maternal Uncle's convictions are not automatically barred by NAC 127.420(2) and should not prohibit CLIENT's placement with an appropriate, loving family member.

Therefore, it is respectfully requested that this Court place CLIENT with his maternal grandmother because it is in his best interest.

Respectfully submitted this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

AFFIDAVIT OF COUNSEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **MOTION FOR RELATIVE PLACEMENT** 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

PMOT
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 3,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.: HEARING REQUESTED

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: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

MEMORANDUM OF POINTS AND AUTHORITIES

I. 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.

II. 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, 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 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]

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

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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."

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]

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.

---

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).

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, 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, ESQ.
Nevada Bar No.: Bar #
Address

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

PMOT
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 3,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 4,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.: HEARING REQUESTED

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 SIBLING VISITATION AND TO INCORPORATE VISITATION ORDER INTO ANY ADOPTION DECREE AND/OR GUARDIANSHIP ORDER

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 Sibling Visitation and to Incorporate Visitation Order into any Adoption Decree and/or Guardianship Order.

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: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND STATEMENT

CLIENT 1, 9 years old, CLIENT 2, 5 years old, CLIENT 3, 3 years old, and CLIENT 4, 1 year old, are siblings and were originally removed from their home on Date. They were made wards of the Juvenile Court and placed in the custody of the Clark County Department of Family Services (hereinafter "DFS") on Date.

Prior to coming into custody, CLIENT 1, CLIENT 2, CLIENT 3, and CLIENT 4 lived in the same home. Initially, when the children came into care, they were all placed in the same foster home. However, after a few months, CLIENT 1 was placed with her paternal aunt and the other three children remained in the same foster home.

Despite being in two separate placements, CLIENT 1 sees her siblings once a week. CLIENT 1 was the primary caretaker for her siblings. The three youngest siblings looked to CLIENT 1 as the most stable influence in their lives.

The permanency plan for CLIENT 1 is guardianship with the paternal aunt. The permanency plan for CLIENT 2, CLIENT 3, and CLIENT 4 is termination of parental rights (hereinafter "TPR") and adoption. The foster parents are the adoptive resource. The TPR trial is scheduled for Date. This Motion for Sibling Visitation Order and Inclusion in Any Adoption Decree is being filed to request that the Court protect and preserve this sibling group's relationship.

II. LEGAL ARGUMENT

A. 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, 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 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 the Clark County Department of Family Services under N.R.S. 432B.470, this Court acquired subject matter jurisdiction over this case, and personal jurisdiction over the minors.

B. NEVADA SUPPORTS VISITATION AND PRESERVATION OF SIBLING RELATIONSHIPS.

The State of Nevada has long recognized the existence and importance of maintaining sibling relationships, especially for youth in foster care. It is for these reasons, the Nevada Legislature has passed legislation that supports and protects sibling relationships.

The sibling relationship is one of the most important relationships that a child will develop in life. As such, the 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)

Furthermore, the Nevada Legislature also mandates that visitation be encouraged during the times siblings are in separate homes if the presumption is rebutted. 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.
. . .

4. After a plan for visitation between a child and the siblings of the child submitted pursuant to subparagraph (4) of paragraph (b) of subsection 2 has been approved by the court, the agency which provides child welfare services must request the court to issue an order requiring the visitation set forth in the plan for visitation. Upon the issuance of such an order, the court shall provide each sibling of the child with the case number of the proceeding for the purpose of allowing the sibling to petition the court for visitation or enforcement of the order for visitation. If a person refuses to comply with or disobeys an order issued pursuant to this subsection, the person may be punished as for a contempt of court. (emphasis added)

Finally, the Legislature requires that courts conduct hearings to determine whether to include visitation orders for siblings in the final adoption decrees.

N.R.S. 127.2827 states:

1. If a child who is in the custody of an agency which provides child welfare services is placed for adoption, the agency must provide the court which is conducting the adoption proceedings with a copy of any order for visitation with a sibling of the child that was issued pursuant to NRS 432B.580 and the court must conduct a hearing to determine whether to include an order for visitation with a sibling in the decree of adoption.

2. The court shall incorporate an order for visitation provided to the court pursuant to subsection 1 into the decree of adoption unless, not later than 30 days after notice of the filing of the petition for adoption is provided to the legal custodian or guardian of the child pursuant to NRS 127.123, any interested party in the adoption, including, without limitation, the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency which provides child welfare services or a licensed child-placing agency petitions the court to exclude the order of visitation with a sibling from the decree of adoption or amend the order for visitation before including the order in the decree of adoption.

. . .

> 4. The sole consideration of the court in making a determination concerning visitation with a sibling pursuant to this section is the best interest of the child. If a petition is submitted pursuant to subsection 2, the court must not enter a decree of adoption until the court has made a determination concerning visitation with a sibling.

This consistent pattern of legislation clearly evidences a concern, favor and mandate of the Nevada Legislature to protect sibling relationships. The statutory provisions require that the courts actively assist children in the foster care system to maintain their important sibling bonds, both while they are in the dependency system, and afterwards if they are adopted.

In the case at hand, CLIENT 2, CLIENT 3, and CLIENT 4 are placed in a foster home together. CLIENT 1 was fortunate to have been placed with a relative. All of the children share a deep bond and wish to continue to have contact with one another. They lived together until they were separated during the foster care process.

These children have expressed their wishes to have a continued sibling relationship with one another. Additionally, the law presumes that it is in their bests interests to continue visiting and communicating with each other, even in the event that termination of parental rights is granted and/or they are adopted or placed under a guardianship.

III. CONCLUSION

The children's requests are exceedingly modest. They simply ask to continue to be able to visit with one another, once per week for two (2) to four (4) hours. The parent, custodian, and/or legal guardian of these children can allow more contact if time and conditions allow. The Nevada Legislature and statutes will allow nothing less.

Respectfully submitted this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

AFFIDAVIT OF COUNSEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **MOTION FOR SIBLING VISITATION AND TO INCORPORATE VISITATION ORDER INTO ANY ADOPTION DECREE AND/OR GUARDIANSHIP ORDER** 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

PMOT
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 3,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 4,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.: HEARING REQUESTED

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: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

MEMORANDUM OF POINTS AND AUTHORITIES

I. 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 2 were placed together in a foster home in Henderson, CLIENT 3 was placed in a foster home in North Las Vegas, and CLIENT 4 was 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 4 were removed from the Maternal 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

A. 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, 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 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 3 and 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, ESQ.
Nevada Bar No.: Bar #
Address

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”

PMOT
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT,** DOB: Date of Birth AGE: Age YEARS OLD A MINOR.	Case No.: Dept. No.: HEARING REQUESTED

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, Attorney, Esq., of Firm, by and on behalf of CLIENT, a minor, and submits this Motion for an Order to Allow CLIENT to Testify by Alternative Methods. This Motion is made pursuant to NRS 50.570 et seq., and is further based upon the affidavit and exhibit attached hereto, the papers and pleadings on file, and any other such documentary or oral evidence as may be presented at the hearing set for this Motion.

DATED this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This matter is set for a contested hearing on the allegations set forth in the Abuse/Neglect petition against CLIENT's father, Father, before Hearing Master Hearing Master in Courtroom Courtroom, Department Department, on Date at Time. The Deputy District Attorney prosecuting the case has indicated he will be calling CLIENT, a minor, to testify at the hearing. As is set forth in the attached Letter from Therapist, CLIENT's therapist, hereinafter referred to as "Exhibit A," CLIENT has indicated that testifying in the presence of his father would cause him severe anxiety and distress.

CLIENT's therapist has indicated that if CLIENT is forced to testify while facing his father it is very possible that his mental state would regress and he would be unable to effectively give testimony. *See* "Exhibit A," attached hereto. Therapist also indicates in her letter that when CLIENT is asked about his father, he becomes very anxious, fidgety, and unfocused and has trouble calming himself down.[1] CLIENT has also told Therapist that he fears for both his own safety and that of his mother, "whenever he is in his father's presence."[2]

In recognition of Therapist's opinion that CLIENT will be caused further trauma if forced to testify before his father regarding the domestic violence he suffered and witnessed at the hands of his father, it is respectfully requested that CLIENT be allowed to testify by alternative methods in accordance with the statutory provisions set forth below.

II. LEGAL ARGUMENT

NRS 50.570 grants this Court discretion to conduct a hearing to determine if a child witness should be allowed to testify by an alternative method. To make that determination, NRS 50.580 provides in pertinent part, "[s]tandards for determining whether a child witness may testify by alternative method,":

> 2. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is

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[1] See Exhibit A.
[2] *Id.*

necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(a) The nature of the proceeding;
(b) The age and maturity of the child;
(c) The relationship of the child to the parties in the proceeding;
(d) The nature and degrees of emotional trauma that the child may suffer in testifying; and
(e) Any other relevant factor.

NRS 50.590 further sets forth factors for the Court to consider in deciding whether or not a child witness should be permitted to testify by alternative means, including the relative availability of alternative methods; whether there is a means or mechanism of reducing the trauma endured by the child in testifying short of alternative methods; the nature of the case and the allegations; the relative rights and interests of the parties; the importance of the child's testimony to the resolution of the case, and the nature and degree of the emotional trauma that the child will suffer if not permitted to testify by alternative methods.

In the instant case, the facts support permitting CLIENT to testify outside the presence of his father by an alternative method in order to forestall any further harm to this young boy. CLIENT is six ("6") years old and currently resides with foster parents; his mother, Mother was also charged in the instant petition due to her persistent drug abuse. Mother has entered a "No Contest" plea and has voluntarily enrolled herself in drug detoxification treatment at Westcare. Since CLIENT has been residing with his foster family, he has experienced growing trepidation at the prospect of being called to testify regarding the violence he has experienced and witnessed.

The allegations set forth in the petition are related almost entirely to the actions of CLIENT's father and his volatile relationship with CLIENT's mother, Mother. The petition details numerous acts of domestic violence that Father perpetrated against Mother and the children and also recounts numerous occasions when Mother neglected to appropriately care for and feed her children due to being under the influence of marijuana, methamphetamine, and alcohol, among other substances. In the last hearing related to this case, CLIENT's father again reiterated his intention to seek a trial on these allegations and sought to have the "No Contact" order imposed by the court rescinded so that he could resume visiting with his children. At that time, CLIENT again stated through counsel the discomfort he felt when he was in the same room

with his father and that he had yet to feel as if he, his mother, or his younger siblings are safe from the aggression of his father.

CLIENT has expressed many times to counsel the intense anxiety he feels just thinking about having to testify in front of his father. CLIENT has asked counsel many times to inquire if he will be permitted to speak with the judge privately about the allegations in the petition because he is unsure if he will be able to maintain his composure with his father in the room staring angrily or disapprovingly at him. Furthermore, CLIENT's therapist has written a letter to the Court indicating that she believes if CLIENT is forced to testify before his abusive father, he will likely backslide and much of the therapeutic progress that has been made may well be squandered. Therapist wrote, "due to CLIENT's high level of anxiety and fearfulness, an alternate way of testifying such as remote or taped testimony may be more fruitful."[3]

Due to the private nature of the allegations contained in the petition, CLIENT's young age, and the salience of his testimony with regard to proving the allegations, NRS 50.580 supports the Court allowing CLIENT to testify by alternative methods. 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. Here, CLIENT can testify privately to Hearing Master Hearing Master in her chambers with only attorneys present while his father is permitted to view the testimony from another location. In sum, the facts and law both support allowing CLIENT to testify by alternative methods because permitting the same is readily achievable and will do no unfair prejudice to the defendant.

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[3] *Id*.

III. CONCLUSION

NRS 50.570, et seq., entrusts to this Honorable Court the power to prevent the enduring of unnecessary trauma by a child witness by permitting the witness to testify by alternative methods when certain enumerated conditions are met. As set forth in the preceding Motion and accompanying Exhibit(s), each and every condition required for permitting alternative methods of testifying are met in this matter. Therefore, it is respectfully requested that this Court issue an order allowing CLIENT to testify by an alternative method.

Respectfully submitted this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

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 Firm appointed to represent the subject minor, CLIENT.
2. I have personal knowledge of the facts alleged herein or the assertions are based on information and belief.
3. I have met with CLIENT, age 6.
4. CLIENT has expressed great anxiety, distress, and some trepidation about the prospect of testifying in the presence of his father regarding the domestic violence allegations contained in the petition.
5. Upon information and belief, the experience of testifying before his father will cause CLIENT an increased likelihood of long-term emotional damage and make more traumatic an already devastating task.

By: _____

SUBSCRIBED AND SWORN to before me
this Day day of Month, Year.

_____
NOTARY PUBLIC in and for
County of Clark, State of Nevada

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Day 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

Exhibit “A”

PPOBJ
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT,** DOB: Date of Birth AGE: Age YEARS OLD A MINOR.	Case No.: Dept. No.: HEARING REQUESTED

OBJECTION TO THE HEARING MASTER'S APPLICATION OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

COMES NOW, CLIENT, by and through her attorney, Attorney, Esq., of Firm, and objects to the application of the Interstate Compact on the Placement of Children to the out-of-state placement in this case. This Objection is based upon the following Memorandum of Points and Authorities, the exhibits attached hereto, the records and files in this case, and such additional documentary and oral evidence as may be presented at the hearing on this Objection.

DATED this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

I STATEMENT OF FACTS

CLIENT, age Age, was brought into the protective custody of the Department of Family Services ("DFS") on or about Date due to allegations of physical abuse and neglect by her mother, Mother. At the time of the alleged abuse and neglect in the petition, CLIENT resided with her mother, while her father, Father, resided in California. Father was in no way involved with the alleged abuse and neglect that led to CLIENT's removal.

Although CLIENT grew up in California living with both her natural parents, she moved with her mother to Las Vegas during the summer of Year when her parents separated. Mother and Father did not make any formal custody arrangements and they are still legally married. Despite the distance, CLIENT still has a strong bond with Father. Furthermore, while CLIENT was in Las Vegas with her mother, she maintained phone contact with Father.

When DFS contacted Father at the end of April, he was very concerned for his daughter's well-being. He immediately provided a relative placement resource for CLIENT in Las Vegas and made arrangements to be present for the Preliminary Protective Hearing. At the Preliminary Protective Hearing on Date, CLIENT's father was present without counsel and requested placement of his daughter. The State requested the opportunity to do a further background check on Father, due to suspicions of a history of domestic violence. Thus, Father was appointed an attorney as was Mother. However, the petition filed on Date only included allegations as to Mother, and no allegations against Father.

At the Entry of Plea Hearing on Date, Father was present again, this time with Father's Attorney, Esq. as counsel. The State, on behalf of DFS, stated that it was still not clear about the details of the father's alleged criminal record, but that it was a concern warranting prior approval through the Interstate Compact on the Placement of Children ("ICPC") process before they could place CLIENT out-of-state. Hearing Master Hearing Master agreed that more information was needed, but prematurely recommended that the ICPC process begin under the Regulation 7 expedited application. This recommendation was issued despite arguments by Father's Attorney that ICPC should not apply to a non-offending custodial parent with no allegations in the petition.

The Court rescinded the appointment of Father's Attorney, averring that Father no longer needed representation since he was not on the petition.

At the continued plea hearings on Date and Date, the Court learned that Father had a single domestic violence conviction dating back approximately two decades, and a "weapons charge" from Year. Father informed the Court that he had engaged in counseling those many years ago to address the domestic violence. He also provided a letter that indicated that the "weapons charge" was dismissed as of Date.

CAP argued that the criminal background of Father did not make him unfit and that he was not now or ever a perpetrator of abuse or neglect against CLIENT, and that she must be immediately placed without ICPC approval. CAP alternatively requested that CLIENT be placed with Father on a summer visit immediately following the end of the school year. However, Hearing Master Hearing Master found that ICPC required her to refuse immediate placement with Father due to concerns related to the unclear details of his criminal background. She also recommended that a home study be done in California before CLIENT could go for the summer visit.

CAP requested written findings at the Date hearing. CAP received the "Findings of Fact, Recommendation, and Order of Approval" (hereinafter "Findings and Recommendation") written by Hearing Master Hearing Master on Date and now timely files this Objection. *See* "Exhibit A." The issue before the Court is whether Hearing Master Hearing Master was clearly erroneous in recommending: 1) that CLIENT not be immediately placed with her non-offending father, Father; and 2) that ICPC applies to placement of CLIENT with Father.

II MEMORANDUM OF POINTS AND AUTHORITIES

A. This Court Is Vested With The Authority To Review Hearing Master Hearing Master's Recommendation.

E.D.C.R. Rule 1.46(g) states in pertinent part:

> Within 10 days after the evidence is closed, the master must present to the presiding judge all papers relating to the case, written findings of fact and recommendations.
>
> 1. Within the above time period, the master must serve upon the parties or their attorney of record and, if no attorney of record, the minor's parent or guardian or

> person responsible for the child's custodial placement, a written copy of the master's findings and recommendations and must also furnish a written explanation of the right of parties to seek review of the recommendations by the presiding judge.
> . . .
>
> 5. At any time prior to the expiration of 5 days after the service of a written copy of the findings and recommendations of a master, a party, a minor's attorney or guardian or person responsible for the child's custodial placement may file an objection motion to the supervising district court judge for the division represented by the master for a hearing. Said motion must state the grounds on which the objection is based and shall be accompanied by a memorandum of points and authorities.
>
> 6. A supervising district judge may, after a review of the record provided by the requesting party and any party in opposition to the review, grant or deny such objection motion. The court may make its decision on the pleadings submitted or after a hearing on the merits. In the absence of a timely objection motion, the findings and recommendation of the master, when confirmed or modified by an order of the supervising district court judge, become an order of the court.
>
> 7. All objection motion hearings of matters initially heard before a master will be before the supervising district judge who may at his or her discretion conduct a trial de novo. The court will review the transcript of the master's hearing, unless another official record is pre-approved by the reviewing judge, and (1) make a decision to affirm, modify, or remand with instructions to the master or (2) conduct a trial on all or a portion of the issues.
>
> 8. A supervising district court judge may, on the court's own motion, order that a rehearing of any matter be heard before a master.
>
> 9. No recommendation of a master or disposition of a juvenile case will become effective until expressly approved by the supervising district court judge.

Furthermore, this Court is not required to accept the findings and recommendations in this case. The Nevada Supreme Court held that:

> Although the juvenile court may adopt the master's findings of fact unless they are clearly erroneous, a master's findings and recommendations are only advisory, and the juvenile court is not obligated to adopt them. The juvenile court ultimately must exercise its own independent judgment when deciding how to resolve a case.

See, In the Matter of A.B., a Minor, 128 Nev. 764, 765, 291 P.3d 122, 124 (2012).

In the case at hand, the findings were based upon the Hearing Master's misinterpretation that the ICPC applied towards CLIENT's placement with her Father. For this reason, CAP respectfully submits that it was clearly erroneous for Hearing Master Hearing Master to deny immediate placement of CLIENT with her Father, and requests this Court to reject the Findings and Recommendation dated Date.

B. In Accordance With *In The Matter Of Parental Rights As To A.G.*, Hearing Master Hearing Master Was Clearly Erroneous In Not Placing The Subject Minor With The Non-Offending Parent.

In February 2013, the Nevada Supreme Court explored the actions of a lower court that had denied custody to a non-offending parent based on concerns that he was engaging in illegal drug use, but against whom no allegations of abuse or neglect were proven. *In the Matter of Parental Rights as to A.G.*, 129 Nev. 125, 295 P.3d 589 (2013). (hereinafter "*In re A.G.*"). The Court emphasized the constitutionally protected fundamental liberty interests and due process rights of parents to custody of their children and to a hearing on parental fitness when that custody is restricted. Thus, *In re A.G.* reasoned that, in the absence of an adjudication of abuse or neglect by the non-offending parent, the social services agency and the lower court should have placed the subject minor with the non-offending parent. Moreover, *In re A.G.* also noted that, despite the proof of illegal drug use by the non-offending parent, the lower court still had an obligation to place the child in his custody because those drug-use concerns were not alleged and adjudicated in the underlying petition. There was not only a lack of due process in that case, but the constitutional rights of parents to custody and control of their children were overwhelmingly in favor of the non-offending parent in that case. Here, Father is not only the non-offending parent, but there are no allegations of abuse or neglect against him. Regardless of the fact that CLIENT was here in Las Vegas with her mother for the past year, Father is the legal parent of CLIENT and there is no custody order restricting or limiting his physical custody over her. As such, Father has the right to physical custody of his child. Also, CLIENT desires to be with him, and the law states it is in her best interest to be with a safe, protective parent.

In re A.G. also explains that social service agencies, such as DFS, can serve the government's interest in protecting the welfare of a child as long as there is "an adequate basis for concern" and due process rights are given. *See Id.* at 597. While the agency has the obligation to ensure that placement with the non-offending parent is safe, that obligation also includes filing a petition of abuse or neglect when the safety concerns necessitate removal. *Id*. Similar to the father in *In re A.G.*, the concerns of DFS are not alleged in the petition, thus not affording Father due

process if his child is being kept from him based on those concerns. Specifically, Hearing Master Hearing Master reasoned that the Court and DFS have some concerns about Father's ability to care for CLIENT in light of the unclear convictions from before CLIENT's birth. *See* "Exhibit A." However, DFS and its counsel are not averring that allegations of abuse or neglect should be brought against Father. *See Id*. 597 ("…if social services had concerns over Kory's drug use and its effect on his ability to care for A.G., Social Services should have maintained a petition for neglect as to Kory and sought to substantiate allegations of Korey's neglect"). The Hearing Master's attempt to adduce evidence of how Father resolved his criminal charges is not the due process promised by the constitutional precedent, nor N.R.S. 432B. In light of the reasoning in *In re A.G.*, Father's right to custody of his child take precedent over the un-alleged concerns. *See Id*. at 597 ("A parent's fundamental liberty interest in the care, custody and control of his child does not 'simply evaporate' because the parent has not been a model parent or may have lost temporary custody of his child to Social Services")(quoting *Santosky v. Kramer)*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

In addition to the constitutional rights of the parent, the statutory preference for placing a child with the non-offending parent should not be so easily dismissed in the absence of a "finding of parental unfitness or substantial endangerment to the child's welfare." *Id*. at 595. Because N.R.S. 432B requires reasonable efforts to preserve and reunify children with their families, children must be placed with their families when it is safe to do so. *Id*. at 596. *In re A.G.* noted that, in restoring custody to the non-offending parent, "the state's interest in protecting the welfare of children is served, because in the absence of findings of parental fitness, a parent is presumed to make decisions in the best interests of his or her child. *Id*. at 595-596 (also noting that there is a general preference for placing the child with a fit parent where the child was removed due to the behavior of the other parent). In this case CLIENT's "health and safety" should be the "paramount concern." *Id*. at 596. Yet, no party has alleged or has evidence that Father poses a risk of immediate or imminent, foreseeable, significant, observable and/or specific risk of harm to CLIENT.

Therefore, this Court must act in the best interests of CLIENT and in the interests of the rights of Father, and place CLIENT with her father immediately.

C. ICPC Does Not Apply When A Court Orders A Child Sent To A Legal Parent Who Resides Out-of-State.

Interstate compacts are formal agreements between the states that have the characteristics of both statutory law and contractual agreements. They are enacted by state legislatures adopting reciprocal laws that substantively mirror one another. The ability of a state to enter into compacts and delegate authority to an interstate agency, is "a conventional grant of legislative power. *State ex rel. Dyer v. Sims*, 341 U.S. 22 (1951).

Compacts have standing as both binding state law and a contract between the party states such that no one state can unilaterally act in conflict with the terms of the compact. Any state law in contradiction or conflict with the compact is unconstitutional, absent a reserve of power to the party states in the compact itself. The terms of the compact take precedence over state law even to the extent that a compact can trump a state constitutional provision (*McComb v. Wambaugh*, 934 F.2nd 474, 479 (3rd Cir. 1991); *Wash. Metro Area Transit Auth. v. One Parcel of Land*, 706 F.2d 1312, 1319 (4th Cir. 1983)).

The Interstate Compact on the Placement of Children (ICPC) is statutory law in 52 jurisdictions and a binding contract between member jurisdictions. The ICPC is premised on the belief that children requiring out-of-state placement should have the same protections and services that would be provided if they remained in their home states. The ICPC outlines the many steps necessary to place a child out of state and establishes uniform legal and administrative procedures governing the interstate placement of children.

In 1985, Nevada adopted the ICPC and became a member jurisdiction: **"**The Interstate Compact on the Placement of Children, set forth in NRS 127.330, is hereby enacted into law and entered into with all other jurisdictions substantially joining therein." N.R.S. § 127.320. The ICPC, as adopted in Nevada, is found at N.R.S. § 127.330 (Interstate Compact on Placement of Children).

Article I (Purpose and Policy) of the ICPC, states that "It is the purpose and policy of the party states to cooperate with each other in the interstate *placement* of children…." (emphasis added). Article II (Definitions), defines a "Placement" as, "the arrangement for the care of a child *in a family free or boarding home, or in a child-caring agency or institution* …." (emphasis added). Article III (Conditions for Placement), states:

> (a)A sending agency shall not send, bring or cause to be sent or brought into any other party state any child *for placement in foster care or as a preliminary to a possible adoption* unless the sending agency complies with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.
>
> (b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state *for placement in foster care or as a preliminary to a possible adoption*, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state.

(emphasis added). N.R.S. § 127.330, Interstate Compact on Placement of Children.

The Nevada Supreme Court has stated that "It is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act." *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). Therefore, "where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent." *McKay*, 102 Nev. at 648, 730 P.2d at 441.

Courts in other jurisdictions have strictly construed the language in their states' enactment of the ICPC to limit the applicability of ICPC to out-of-state placements for foster care or preliminary to adoption, and denied that the ICPC is ever applicable to the transfer of a child to his or her natural parent. *See, McComb v. Wambaugh*, 934 F.2d 474, 482 (3rd Cir. 1991) (United States Court of Appeals for the Third Circuit concluded that the ICPC does not apply when a court in one state directs that a child be taken from foster care and sent to a natural parent in another participating state.); *Arkansas Dept. of Human Services v. Huff*, 347 Ark. 553, 65 S.W.3d 880 (2002) (Court held that the ICPC, read as a whole, was intended only to govern placing children in substitute arrangements for parental care, such as foster care or adoption.). *See also*, *In re Alexis O*. 157 N.H. 781, 959 A.2d 176 (2008) ("The ICPC's history confirms that its drafters intended it

to apply only to placement of a child for foster care or as a preliminary to adoption. The drafters did not intend for it to apply to natural parents." 157 N.H. at 789, 959 A.2d at 183)., *State Div. of Youth And Family Services v. K.F.*, 353 N.J. Super 623, 803 A.2d 721 (2002); *Tara S. v. Superior Court*, 17 Cal.Rptr.2d 315, 13 Cal.App.4th 1834 (1993) (Court stated that interpreting the definition of "placement" as including a parent's home "does not make sense in light of article 3 which limits the ICPC to foster care and possible adoption." 13 Cal.App.4th at 1837-38); *In re Johnny S.*, 47 Cal.Rptr.2d 94, 40 Cal.App.4th 969 (1995) ("[W]e are persuaded that the ICPC is intended to apply only to interstate placements for foster care and preliminary to a possible adoption, and not to placements with a parent". *Id*. at 100, 49 Cal.App.4th 977.); *In re John M*, 47 Cal.Rptr.3d 281; 141 Cal.App.4th 1564 (2006) ("For the reasons stated in *Tara S. v. Superior Court* (citation omitted) and *In re Johnny S.* (citation omitted), we conclude that compliance with the *ICPC* is not required for placement with an out-of-state parent." 47 Cal.Rptr.3d at 288).[1]

Since the placement at issue in this case is that of CLIENT with her natural father in California, by the reasoning of these cases, the ICPC does not apply. Hearing Master Hearing Master reasoned that the Court would have to submit for ICPC if /when it takes formal jurisdiction and establishes warship following the scheduled adjudicatory hearing. *See* "Exhibit A." However, it follows from *In re A.G.,* that the Court could establish jurisdiction over CLIENT through Mother, yet not keep her a ward of the state in light of the availability of a protective, non-offending parent. Essentially, the State would achieve its goal of substantiating the petition against mother, while DFS could uphold it duty of reasonable efforts and not continue to unnecessarily "inject itself into

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[1] A 1988 Opinion of the Nevada Attorney General (Opinion No. 88-4 Children: Interstate Placement Compact (May 24, 1988) does not compel a different result: this opinion was written prior to the more recent court cases analyzing the ICPC and declining to extend it to include a custody change in favor of a non-offending parent. Moreover, the reasoning of this opinion is suspect and the conclusion creates an absurd result – "When a child is sent or brought, or is caused to be sent or brought, into another state which is party to the ICPC, it is necessary for the sending agency (the court, the Welfare Division, or another agency which sends or brings or causes to be sent or brought the child into the other state) to retain jurisdiction and custody under article V of the ICPC until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state." If the AG is correct, the State of Nevada could have legal and financial obligations toward a child that exceeds that of his/her natural parent **until the child reaches the age of majority** (since obviously, a natural parent cannot adopt his or her own child).

the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." Id. at 595 (quoting *Troxel v. Granville*, 530 U.S. 57, 68-69, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

D. Even If This Court Believes That The ICPC Might Apply To Transfers To Natural Parents In Other Fact Situations, It Clearly Does Not Apply To Father, Who Is A Non-Offending Parent Against Whom There Are No Allegations Of Unfitness, Abuse Or Neglect.

Article VII of the ICPC gives the Nevada ICPC Administrator the authority to adopt regulations to carry out the terms and provisions of the ICPC. "The executive head of each jurisdiction party to this compact shall designate an officer to act as the administrator and general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, may adopt regulations to carry out more effectively the terms and provisions of this compact." N.R.S. § 127.330, Interstate Compact on Placement of Children, Article VII, Compact Administrator.

The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) consists of the ICPC administrators from all 50 states, the District of Columbia and the U.S. Virgin Islands. Acting as a body and pursuant to Article VII, the AAICPC promulgates the rules and regulations "to carry out the rules and terms of the Compact more effectively."

Regulation 3, effective as of October 1, 2011, provides in pertinent part:

> 3. Placements made without ICPC protection:
> (a) A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent. Receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.[2]

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[2]In *McComb v. Wambaugh*, 934 F.2d 474 (3rd Cir. 1991), the court acknowledged that AAICPC Regulation 3, states that "`placement' as defined in Article II(d) includes the arrangement for the care of a child in the home of his parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, or non-agency guardian making the arrangement for care as a plan exempt under Article VIII(a) of the Compact." McComb v. Wambaugh, 934 F.2d at 481. The McComb court noted that "A regulation contrary to the statute under which it was promulgated cannot be upheld (*citing Yamaha Motor Corp., U.S.A. v. Richard's Honda Yamaha*, 344 Ark. 44, 38 S.W.3d 356 (2001) and concluded that the regulation expands the scope of the Compact beyond that set out in Article III. *McComb v. Wambaugh, supra*.) A California court found this reasoning persuasive: "regulations requiring such advance approval for placement with a parent are neither binding nor persuasive in light of the limitations expressed in the statute itself." *In re Johnny S.*, 40 Cal.App.4th at p. 978.

In Hearing Master Hearing Master's Findings and Recommendation, she reasons that the "concerns" expressed by DFS regarding Father's criminal background remove this situation from the exemption in Regulation 3. *See* "Exhibit A." However, this interpretation is clearly erroneous, because Regulation 3 requires "evidence that the parent is unfit" which, in this court system, is achieved through an adjudicatory hearing. In this case there are no filed allegations that his criminal background makes him "unfit" and State is not seeking to present evidence of Father being an unfit parent in its petition of abuse or neglect. Even if the conviction for domestic violence is red-flag triggering, the presumptions of N.R.S. 432B, the Court must weigh the facts that 1) domestic violence conviction dates back almost twenty years; 2) Father has repeatedly stated in court that he took classes at the time of the conviction; and 3) he has not had any other convictions for domestic violence since then. All of these factors are sufficient to assuage the concerns of the Court. Furthermore, the lack of any verifiable evidence that Father would pose a substantial risk of endangerment to CLIENT solely by virtue of his convictions, is also paramount to why the Hearing Master's denial of placement was clearly erroneous.

III CONCLUSION

Commencement of an ICPC proceeding will unduly delay CLIENT's reunion with a loving parent, and is not in CLIENT's best interests. It is both cruel and unnecessary to require CLIENT to languish in limbo while ICPC slowly winds its way through the usual bureaucratic morass, when she has a loving, competent parent waiting to care for her. CLIENT respectfully requests that this Court find that Hearing Master Hearing Master was clearly erroneous in her denial of placement and recommendation that ICPC proceedings and a home study be approved before CLIENT could be placed with her father. CLIENT also respectfully requests that this Court order the Clark

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Other courts have held that AAICPC had the authority to promulgate Regulation 3 and that transfers to natural parents are "placements" to which the ICPC applies.

Because the facts in this case would exempt it from the ambit of the ICPC under Regulation 3, this court does not need to decide whether the promulgation of Regulation 3 exceeded the AAICPC's authority.

County Department of Family Services to terminate any ICPC placement efforts and immediately send her to her father in the State of California, or release her to her father and allow him to transport her back to California.

Respectfully submitted this Day day of Month, Year.

By: _____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **OBJECTION TO THE HEARING MASTER'S APPLICATION OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN** 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”

PORD
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT 1,** DOB: Date of Birth AGE: Age YEARS OLD **CLIENT 2,** DOB: Date of Birth AGE: Age YEARS OLD MINORS.	Case No.: Dept. No.:

ORDER FOR SIBLING VISITATION

This matter having come before the Honorable Judge on Date, with Attorney, Esq., of Firm, appearing on behalf of the subject minors, CLIENT 1 and CLIENT 2; Attorney, Esq., Deputy District Attorney, appearing on behalf of the Clark County Department of Family Services; Attorney, Esq., appearing on behalf of the natural mother, Mother; Attorney, Esq., appearing on behalf of the natural father, Father, and Case Manager, Case Manager, Department of Family Services, also appearing. This Court having reviewed all papers and pleadings on file and having heard oral arguments makes the following:

FINDINGS:

1. That the Court has complete jurisdiction in the premises, both as to the subject matter and the parties hereto.
2. CLIENT 1 and CLIENT 2 have been placed under the jurisdiction of the Juvenile Court.
3. CLIENT 1 is currently placed in a foster home.
4. CLIENT 2 is currently placed in a relative home.

5. The Court approved permanency plan for both subject minors is termination of parental rights and adoption.
6. It is in the best interest of CLIENT 1 and CLIENT 2 that regular sibling visits be allowed pursuant to NRS 432B.580(4).

IT IS HEREBY ORDERED that:

1. In accordance with NRS 432B.580(4), CLIENT 1 and CLIENT 2 shall visit, in-person, at least once per month at a time and place mutually agreed upon between their respective families. Any and all in-person visits shall take into account the siblings' school, social, and vacation dates.
2. If a planned in-person visit cannot take place as scheduled, the parties shall communicate as soon as the need for the change in scheduling becomes apparent, and shall arrange for an alternate date and time, if possible.
3. In the event that any of the siblings relocate from Clark County, Nevada, they shall have unlimited telephone, computer and written contact with one another when age appropriate, as detailed below. The respective families will encourage and support in-person visits when the same can be facilitated.
4. CLIENT 1 and CLIENT 2, when age appropriate, shall have unlimited telephone, computer, and written contact with each other, including, but not limited to, cards, letters, emails, Skype, Facetime and other social media.
5. Nothing in this Order is intended to preclude additional visits between CLIENT 1 and CLIENT 2.
6. Visitation shall commence upon the entry of this ORDER and shall continue until such time that CLIENT 1 reaches the age of majority or until further order of this Court.
7. The Department of Family Services shall notify any future prospective adoptive parents and their attorneys that this Order for Sibling Visitation exists.
8. The Order for Sibling Visitation shall be merged and incorporated into any and all future Decrees of Adoption.

9. In accordance with NRS 127.171, the Department of Family Services shall notify the Court, which is conducting the adoption proceedings, that this Sibling Visitation Order exists and that it should be incorporated into the Decree of Adoption.

DATED this Day day of Month, Year.

_____
DISTRICT COURT JUDGE

Submitted by:

_____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

POST
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	Case No.:
	Dept. No.:
CLIENT,	
DOB: Date of Birth	
AGE: Age YEARS OLD	
A MINOR.	

ORDER SHORTENING TIME

Upon application for Order Shortening Time, and good cause appearing therefore,

IT IS HEREBY ORDERED that the time set for hearing CLIENT'S MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS ("Motion") is hereby shortened, and that the Motion shall be heard on the Day day of Month, Year, at Time.

DATED this Day day of Month, Year.

_____
DISTRICT COURT JUDGE

Submitted by:

_____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

PORD
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	Case No.:
	Dept. No.:
CLIENT,	
DOB: Date of Birth	
AGE: Age YEARS OLD	
A MINOR.	

ORDER TO PERMIT CHILD WITNESSES TO TESTIFY BY ALTERNATIVE METHODS

The above-captioned matter, having come before the Court on Date, with Attorney, Esq., of Firm, appearing on behalf of the subject minor, CLIENT; Attorney, Esq., Deputy District Attorney, appearing on behalf of the Clark County Department of Family Services; Attorney, Esq., appearing on behalf of the natural mother, Mother; Attorney, Esq., appearing on behalf of the natural father, Father; and Case Manager, Case Manager, Department of Family Services, also appearing. The Court having heard oral argument and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to NRS 50.580 and 50.600, upon subject minor, CLIENT being called to testify at the trial set for Date at Time, the subject minor shall be permitted to testify by alternative methods.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the subject minor being called to testify, all parties, including the mother and father, Mother and Father, will be excluded from the courtroom.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the only people allowed to remain in the courtroom during testimony will be counsel for all parties.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all parties who are excluded will be permitted to watch the subject minor's testimony from chambers or where designated.

DATED this Day day of Month, Year.

_____
DISTRICT COURT JUDGE

Submitted by:

_____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

PSAO
ATTORNEY, ESQ.
Nevada Bar No. Bar #
Address

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: **CLIENT,** DOB: Date of Birth AGE: Age YEARS OLD A MINOR.	Case No.: Dept. No.:

STIPULATION AND ORDER TO PLACE MATTER ON CALENDAR

COMES NOW, subject minor, CLIENT, by and through his attorney, Attorney, Esq., of Firm, and Deputy District Attorney Attorney, Esq., attorney for the Clark County Department of Family Services, stipulate to the following:

1. CLIENT is 18 years old and will be graduating from high school on Date. CLIENT has signed the paperwork for voluntary jurisdiction.
2. There is a review hearing scheduled for Date.
3. It is appropriate to place this matter back on calendar to address case closure as to the subject minor at an earlier setting available.
4. The parties are requesting the matter be set for a time convenient for the court following the subject minor's graduation from high school, preferably on Date.

_____ ATTORNEY, ESQ. Nevada Bar No. Bar # Attorney for Subject Minor	_____ Date	_____ ATTORNEY, ESQ. Deputy District Attorney Nevada Bar No. Bar # Attorney for Clark County Department of Family Services	_____ Date

ORDER

Pursuant to the stipulation and good cause appearing,

THIS COURT HEREBY ORDERS THAT this matter shall be placed on calendar on the Day day of Month, Year at Time.

DATED this Day day of Month, Year.

_____
DISTRICT COURT JUDGE

Submitted by:

_____
ATTORNEY, ESQ.
Nevada Bar No.: Bar #
Address

APPENDIX B
ATTORNEY'S ROLES AND RESPONSIBILITIES

American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases

American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

Nevada Safety Assessment

Safety Intervention and Permanency System (SIPS) Chart

AMERICAN BAR ASSOCIATION
STANDARDS OF PRACTICE FOR LAWYERS
WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES

Approved by the American Bar Association House of Delegates, February 5, 1996

PREFACE

All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continues. These Abuse and Neglect Standards are meant to apply when a lawyer is appointed for a child in any legal action based on: (a) a petition filed for protection of the child; (b) a request to a court to change legal custody, visitation, or guardianship based on allegations of child abuse or neglect based on sufficient cause; or (c) an action to terminate parental rights.

These Standards apply only to lawyers and take the position that although a lawyer *may* accept appointment in the dual capacity of a "lawyer/guardian ad litem," the lawyer's primary duty must still be focused on the protection of the legal rights of the child client. The lawyer/guardian ad litem should therefore perform all the functions of a "child's attorney," except as otherwise noted.

These Standards build upon the ABA-approved JUVENILE JUSTICE STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES (1979) which include important directions for lawyers representing children in juvenile court matters generally, but do not contain sufficient guidance to aid lawyers representing children in abuse and neglect cases. These Abuse and Neglect Standards are also intended to help implement a series of ABA-approved policy resolutions (in Appendix) on the importance of legal representation and the improvement of lawyer practice in child protection cases.

In support of having lawyers play an active role in child abuse and neglect cases, in August 1995 the ABA endorsed a set of RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES produced by the National Council of Juvenile and Family Court Judges. The RESOURCE GUIDELINES stress the importance of quality representation provided by competent and diligent lawyers by supporting: 1) the approach of vigorous representation of child clients; and 2) the actions that courts should take to help assure such representation.

These Standards contain two parts. Part I addresses the specific roles and responsibilities of a lawyer appointed to represent a child in an abuse and neglect case. Part II provides a set of standards for judicial administrators and trial judges to assure high quality legal representation.

PART I– STANDARDS FOR THE CHILD'S ATTORNEY

A. DEFINITIONS

A-1. The Child's Attorney. The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

Commentary

These Standards explicitly recognize that the child is a separate individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position. Consequently, the child's attorney owes traditional duties to the child as client consistent with ER 1.14(a) of the Model Rules of Professional Conduct. In all but the exceptional case, such as with a preverbal child, the child's attorney will maintain this traditional relationship with the child/client. As with any client, the child's attorney may counsel against the pursuit of a particular position sought by the child. The child's attorney should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the child's attorney should ensure that the decision the child ultimately makes reflects his or her actual position.

A-2. Lawyer Appointed as Guardian Ad Litem. A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences.

Commentary

In some jurisdictions the lawyer may be appointed as guardian ad litem. These Standards, however, express a clear preference for the appointment as the "child's attorney." These Standards address the lawyer's obligations to the child as client.

A lawyer appointed as guardian ad litem is almost inevitably expected to perform legal functions on behalf of the child. Where the local law permits, the lawyer is expected to act in the dual role of guardian ad litem and lawyer of record. The chief distinguishing factor between the roles is the manner and method to be followed in determining the legal position to be advocated. While a guardian ad litem should take the child's point of view into account, the child's preferences are not binding, irrespective of the child's age and the ability or willingness of the child to express preferences. Moreover, in many states, a guardian ad litem may be required by statute or custom to perform specific tasks, such as submitting a report or testifying as a fact or expert witness. These tasks are not part of functioning as a "lawyer."

These Standards do not apply to nonlawyers when such persons are appointed as guardians ad litem or as "court appointed special advocates" (CASA). The nonlawyer guardian ad litem cannot and should not be expected to perform any legal functions on behalf of a child.

A-3. Developmentally Appropriate. "Developmentally appropriate" means that the child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age, level of education, cultural context, and degree of language acquisition.

Commentary

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning and consequences of action. See DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977). A child client may not understand the legal terminology and for a variety of reasons may choose a particular course of action without fully appreciating the implications. With a child the potential for not understanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and degree of language acquisition. There is also the possibility that because of a particular child's developmental limitations, the lawyer may not completely understand the child's responses. Therefore, the child's attorney must learn how to ask developmentally appropriate questions and how to interpret the child's responses. See ANNE GRAFFAM WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (ABA Center on Children and the Law 1994). *The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.*

B. GENERAL AUTHORITY AND DUTIES

B-1. Basic Obligations. The child's attorney should:

(1) Obtain copies of all pleadings and relevant notices;
(2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
(3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
(4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
(5) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
(6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
(7) Identify appropriate family and professional resources for the child.

Commentary

The child's attorney should not be merely a fact-finder, but rather, should zealously advocate a position on behalf of the child. (The same is true for the guardian ad litem, although the position to be advocated may be different). In furtherance of that advocacy, the child's attorney must be adequately prepared prior to hearings. The lawyer's presence at and active participation in all hearings is absolutely critical. See, RESOURCE GUIDELINES, at 23.

Although the child's position may overlap with the position of one or both parents, third-party caretakers, or a state agency, the child's attorney should be prepared to participate fully in any proceedings and not merely defer to the other parties. Any identity of position should be based on the merits of the position, and not a mere endorsement of another party's position.

While subsection (4) recognizes that delays are usually harmful, there may be some circumstances when delay may be beneficial. Section (7) contemplates that the child's attorney will identify counseling, educational and health services, substance abuse programs for the child and other family members, housing and other forms of material assistance for which the child may qualify under law. The lawyer can also identify family members, friends, neighbors, or teachers with whom the child feels it is important to maintain contact; mentoring programs, such as Big Brother/Big Sister; recreational opportunities that develop social skills and self-esteem; educational support programs; and volunteer opportunities which can enhance a child's self-esteem.

B-2. Conflict Situations. (1) If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the lawyer should continue to perform as the child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.

(2) If a lawyer is appointed as a "child's attorney" for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.

Commentary

The primary conflict that arises between the two roles is when the child's expressed preferences differ from what the lawyer deems to be in the child's best interests. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. While the lawyer should be careful not to apply undue pressure to a child, the lawyer's advice and guidance can often persuade the child to change an imprudent position or to identify alternative choices if the child's first choice is denied by the court.

The lawyer-client role involves a confidential relationship with privileged communications, while a

guardian ad litem-client role may not be confidential. Compare Alaska Bar Assoc. Ethics Op. #854 (1985) (lawyer-client privilege does not apply when the lawyer is appointed to be child's guardian ad litem) with Bentley v. Bentley, 448 N.Y.S.2d 559 (App. Div. 1982) (communication between minor children and guardian ad litem in divorce custody case is entitled to lawyer-client privilege). Because the child has a right to confidentiality and advocacy of his or her position, the child's attorney can never abandon this role. Once a lawyer has a lawyer-client relationship with a minor, he or she cannot and should not assume any other role for the child, especially as guardian ad litem. When the roles cannot be reconciled, another person must assume the guardian ad litem role. See Arizona State Bar Committee on Rules of Professional Conduct, Opinion No. 86-13 (1986).

B-3. Client Under Disability. The child's attorney should determine whether the child is "under a disability" pursuant to the Model Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.

Commentary

These Standards do not accept the idea that children of certain ages are "impaired," "disabled," "incompetent," or lack capacity to determine their position in litigation. Further, these Standards reject the concept that any disability must be globally determined.

Rather, disability is contextual, incremental, and may be intermittent. The child's ability to contribute to a determination of his or her position is functional, depending upon the particular position and the circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another. This Standard relies on empirical knowledge about competencies with respect to both adults and children. See, e.g., ALLEN E. BUCHANAN & DAN W. BROCK, DECIDING FOR OTHERS: THE ETHICS OF SURROGATE DECISION MAKING 217 (1989).

B-4. Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation.

Commentary

The lawyer has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determination of the particular position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

As in any other lawyer/client relationship, the lawyer may express his or her assessment of the case, the best position for the child to take, and the reasons underlying such recommendation. A child, however, may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult/child relationships. Therefore, the lawyer needs to understand what the child knows and what factors are influencing the child's decision. The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child when deciding the best time to express his or her assessment of the case.

Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about the child's needs, priorities, and previous experiences.

The lawyer for the child has dual fiduciary duties to the child which must be balanced. On one hand, the lawyer has a duty to ensure that the child client is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by these Abuse and Neglect Standards or the Code of Professional Responsibility.

While the child is entitled to determine the overall objectives to be pursued, the child's attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. These Abuse and Neglect Standards do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Standards do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or preverbal child.

(1) To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.

Commentary

There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child's attorney and a person acting as guardian ad litem.

(2) To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests.

Commentary

The child's failure to express a position is distinguishable from a directive that the lawyer not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.

(3) If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

Commentary

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a

foster home or other out-of-home placement.

In most cases the ethical conflict involved in asserting a position which would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function. If the lawyer has taken the time to establish rapport with the child and gain that child's trust, it is likely that the lawyer will be able to persuade the child to abandon a dangerous position or at least identify an alternate course.

If the child cannot be persuaded, the lawyer has a duty to safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's best interests without being bound by the child's direction. As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the guardian ad litem may never learn of the disclosed danger.

Confidentiality is abrogated for various professionals by mandatory child abuse reporting laws. Some states abrogate lawyer-client privilege by mandating reports. States which do not abrogate the privilege may permit reports notwithstanding professional privileges. The policy considerations underlying abrogation apply to lawyers where there is a substantial danger of serious injury or death. Under such circumstances, the lawyer must take the minimum steps which would be necessary to ensure the child's safety, respecting and following the child's direction to the greatest extent possible consistent with the child's safety and ethical rules.

The lawyer may never counsel a client or assist a client in conduct the lawyer knows is criminal or fraudulent. See ER 1.2(d), Model Rules of Professional Conduct, DR 7-102(A)(7), Model Code of Professional Responsibility. Further, existing ethical rules requires the lawyer to disclose confidential information to the extent necessary to prevent the client from committing a criminal act likely to result in death or substantial bodily harm, see ER 1.6(b), Model Rules of Professional Conduct, and permits the lawyer to reveal the intention of the client to commit a crime. See ER 1.6(c), Model Rules of Professional Conduct, DR 4-101(C)(3), Model Code of Professional Responsibility. While child abuse, including sexual abuse, are crimes, the child is presumably the victim, rather than the perpetrator of those crimes. Therefore, disclosure of confidences is designed to protect the client, rather than to protect a third party from the client. Where the child is in grave danger of serious injury or death, the child's safety must be the paramount concern.

The lawyer is not bound to pursue the client's objectives through means not permitted by law and ethical rules. See DR-7-101(A)(1), Model Code of Professional Responsibility. Further, lawyers may be subject personally to sanctions for taking positions that are not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

B-5. Child's Interests. The determination of the child's legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.

Commentary

A lawyer who is required to determine the child's interests is functioning in a nontraditional role by determining the position to be advocated independently of the client. The lawyer should base the position, however, on objective criteria concerning the child's needs and interests, and not merely on the lawyer's personal values, philosophies, and experiences. The child's various needs and interests may be in conflict and must be weighed against each other. Even nonverbal children can communicate their needs and interests through their behaviors and developmental levels. See generally JAMES GARBARINO & FRANCES M. STOTT, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992). The lawyer may seek the advice and consultation of experts and other knowledgeable people in both determining and weighing such needs and interests.

A child's legal interests may include basic physical and emotional needs, such as safety, shelter, food, and clothing. Such needs should be assessed in light of the child's vulnerability, dependence upon others, available external resources, and the degree of risk. A child needs family affiliation and stability of placement. The child's developmental level, including his or her sense of time, is relevant to an assessment of need. For example, a very young child may be less able to tolerate separation from a primary caretaker than an older child, and if separation is necessary, more frequent visitation than is ordinarily provided may be necessary.

In general, a child prefers to live with known people, to continue normal activities, and to avoid moving. To that end, the child's attorney should determine whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources. The lawyer must determine the child's feelings about the proposed caretaker, however, because familiarity does not automatically confer positive regard. Further, the lawyer may need to balance competing stability interests, such as living with a relative in another town versus living in a foster home in the same neighborhood. The individual child's needs will influence this balancing task.

In general, a child needs decisions about the custodial environment to be made quickly. Therefore, if the child must be removed from the home, it is generally in the child's best interests to have rehabilitative or reunification services offered to the family quickly. On the other hand, if it appears that reunification will be unlikely, it is generally in the child's best interests to move quickly toward an alternative permanent plan. Delay and indecision are rarely in a child's best interests.

In addition to the general needs and interests of children, individual children have particular needs, and the lawyer must determine the child client's individual needs. There are few rules which apply across the board to all children under all circumstances.

C. ACTIONS TO BE TAKEN

C-1. Meet With Child. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.

Commentary

Meeting with the child is important before court hearings and case reviews. In addition, changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with the child. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next. This also allows the lawyer to assess the child's circumstances, often leading to a greater understanding of the case, which may lead to more creative solutions in the child's interest. A lawyer can learn a great deal from meeting with child clients, including a preverbal child. See, e.g., JAMES GARBARINO, ET AL, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992).

C-2. Investigate. To support the client's position, the child's attorney should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:

(1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;

Commentary

Thorough, independent investigation of cases, at every stage of the proceedings, is a key aspect of providing competent representation to children. See, RESOURCE GUIDELINES, AT 23. The lawyer may need to use subpoenas or other discovery or motion procedures to obtain the relevant records, especially those records which

pertain to the other parties. In some jurisdictions the statute or the order appointing the lawyer for the child includes provision for obtaining certain records.

(2) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;

Commentary

Another key aspect of representing children is the review of all documents submitted to the court as well as relevant agency case files and law enforcement reports. See, RESOURCE GUIDELINES, at 23. Other relevant files that should be reviewed include those concerning child protective services, developmental disabilities, juvenile delinquency, mental health, and educational agencies. These records can provide a more complete context for the current problems of the child and family. Information in the files may suggest additional professionals and lay witnesses who should be contacted and may reveal alternate potential placements and services.

(3) Contacting lawyers for other parties and nonlawyer guardians ad litem or court-appointed special advocates (CASA) for background information;

Commentary

The other parties' lawyers may have information not included in any of the available records. Further, they can provide information on their respective clients' perspectives. The CASA is typically charged with performing an independent factual investigation, getting to know the child, and speaking up to the court on the child's "best interests." Volunteer CASAs may have more time to perform their functions than the child's attorney and can often provide a great deal of information to assist the child's attorney. Where there appears to be role conflict or confusion over the involvement of both a child's attorney and CASA in the same case, there should be joint efforts to clarify and define mutual responsibilities. See, RESOURCE GUIDELINES, at 24.

(4) Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;

Commentary

Such contact generally should include visiting the home, which will give the lawyer additional information about the child's custodial circumstances.

(5) Obtaining necessary authorizations for the release of information;

Commentary

If the relevant statute or order appointing the lawyer for the child does not provide explicit authorization for the lawyer's obtaining necessary records, the lawyer should attempt to obtain authorizations for release of information from the agency and from the parents, with their lawyer's consent. Even if it is not required, an older child should be asked to sign authorizations for release of his or her own records, because such a request demonstrates the lawyer's respect for the client's authority over information.

(6) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;

Commentary

In some jurisdictions the child's attorney is permitted free access to agency case workers. In others, contact with the case worker must be arranged through the agency's lawyer.

(7) Reviewing relevant photographs, video or audio tapes and other evidence; and

Commentary

It is essential that the lawyer review the evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of the evidence.

(8) Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staffings concerning the child as needed.

Commentary

While some courts will not authorize compensation for the child's attorney to attend such collateral meetings, such attendance is often very important. The child's attorney can present the child's perspective at such meetings, as well as gather information necessary to proper representation. In some cases the child's attorney can be pivotal in achieving a negotiated settlement of all or some issues. The child's attorney may not need to attend collateral meetings if another person involved in the case, such as a social worker who works the lawyer, can get the information or present the child's perspective.

C-3. File Pleadings. The child's attorney should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

(1) A mental or physical examination of a party or the child;
(2) A parenting, custody or visitation evaluation;
(3) An increase, decrease, or termination of contact or visitation;
(4) Restraining or enjoining a change of placement;
(5) Contempt for non-compliance with a court order;
(6) Termination of the parent-child relationship;
(7) Child support;
(8) A protective order concerning the child's privileged communications or tangible or intangible property;
(9) Request services for child or family; and
(10) Dismissal of petitions or motions.

Commentary

Filing and arguing necessary motions is an essential part of the role of a child's attorney. See, RESOURCE GUIDELINES, at 23. Unless the lawyer is serving in a role which explicitly precludes the filing of pleadings, the lawyer should file any appropriate pleadings on behalf of the child, including responses to the pleadings of the other parties. The filing of such pleadings can ensure that appropriate issues are properly before the court and can expedite the court's consideration of issues important to the child's interests. In some jurisdictions, guardians ad litem are not permitted to file pleadings, in which case it should be clear to the lawyer that he or she is not the "child's attorney" as defined in these Standards.

C-4. Request Services. Consistent with the child's wishes, the child's attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

(1) Family preservation-related prevention or reunification services;
(2) Sibling and family visitation;
(3) Child support;
(4) Domestic violence prevention, intervention, and treatment;
(5) Medical and mental health care;
(6) Drug and alcohol treatment;
(7) Parenting education;
(8) Semi-independent and independent living services;

(9) Long-term foster care;
(10) Termination of parental rights action;
(11) Adoption services;
(12) Education;
(13) Recreational or social services; and
(14) Housing.

Commentary

The lawyer should request appropriate services even if there is no hearing scheduled. Such requests may be made to the agency or treatment providers, or if such informal methods are unsuccessful, the lawyer should file a motion to bring the matter before the court. In some cases the child's attorney should file collateral actions, such as petitions for termination of parental rights, if such an action would advance the child's interest and is legally permitted and justified. Different resources are available in different localities.

C-5. Child With Special Needs. Consistent with the child's wishes, the child's attorney should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:

(1) Special education and related services;
(2) Supplemental security income (SSI) to help support needed services;
(3) Therapeutic foster or group home care; and
(4) Residential/in-patient and out-patient psychiatric treatment.

Commentary

There are many services available from extra-judicial, as well as judicial, sources for children with special needs. The child's attorney should be familiar with these other services and how to assure their availability for the client. See generally, THOMAS A. JACOBS, CHILDREN & THE LAW: RIGHTS & OBLIGATIONS (1995); LEGAL RIGHTS OF CHILDREN (2d ed. Donald T. Kramer, ed., 1994).

C-6. Negotiate Settlements. The child's attorney should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's attorney should use suitable mediation resources.

Commentary

Particularly in contentious cases, the child's attorney may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child. If a parent is legally represented, it is unethical for the child's attorney to negotiate with a parent directly without the consent of the parent's lawyer. Because the court is likely to resolve at least some parts of the dispute in question based on the best interests of the child, the child's attorney is in a pivotal position in negotiation.

Settlement frequently obtains at least short term relief for all parties involved and is often the best resolution of a case. The child's attorney, however, should not become merely a facilitator to the parties' reaching a negotiated settlement. As developmentally appropriate, the child's attorney should consult the child prior to any settlement becoming binding.

D. HEARINGS

D-1. Court Appearances. The child's attorney should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

D-2. Client Explanation. The child's attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

D-3. Motions and Objections. The child's attorney should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney should preserve legal issues for appeal, as appropriate.

D-4. Presentation of Evidence. The child's attorney should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.

Commentary

The child's position may overlap with the positions of one or both parents, third-party caretakers, or a child protection agency. Nevertheless, the child's attorney should be prepared to participate fully in every hearing and not merely defer to the other parties. Any identity of position should be based on the merits of the position (consistent with Standard B-6), and not a mere endorsement of another party's position.

D-5. Child at Hearing. In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.

Commentary

A child has the right to meaningful participation in the case, which generally includes the child's presence at significant court hearings. Further, the child's presence underscores for the judge that the child is a real party in interest in the case. It may be necessary to obtain a court order or writ of habeas corpus ad testificandum to secure the child's attendance at the hearing.

A decision to exclude the child from the hearing should be made based on a particularized determination that the child does not want to attend, is too young to sit through the hearing, would be severely traumatized by such attendance, or for other good reason would be better served by nonattendance. There may be other extraordinary reasons for the child's non-attendance. The lawyer should consult the child, therapist, caretaker, or any other knowledgeable person in determining the effect on the child of being present at the hearing. In some jurisdictions the court requires an affirmative waiver of the child's presence if the child will not attend. Even a child who is too young to sit through the hearing may benefit from seeing the courtroom and meeting, or at least seeing, the judge who will be making the decisions. The lawyer should provide the court with any required notice that the child will be present. Concerns about the child being exposed to certain parts of the evidence may be addressed by the child's temporary exclusion from the court room during the taking of that evidence, rather than by excluding the child from the entire hearing.

The lawyer should ensure that the state/ custodian meets its obligation to transport the child to and from the hearing. Similarly, the lawyer should ensure the presence of someone to accompany the child any time the child is temporarily absent from the hearing.

D-6. Whether Child Should Testify. The child's attorney should decide whether to call the child as a witness. The decision should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and

withstand possible cross-examination. Ultimately, the child's attorney is bound by the child's direction concerning testifying.

Commentary

There are no blanket rules regarding a child's testimony. While testifying is undoubtedly traumatic for many children, it is therapeutic and empowering for others. Therefore, the decision about the child's testifying should be made individually, based on the circumstances of the individual child and the individual case. The child's therapist, if any, should be consulted both with respect to the decision itself and assistance with preparation. In the absence of compelling reasons, a child who has a strong desire to testify should be called to do so. See ANN M. HARALAMBIE, THE CHILD'S LAWYER: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES ch. 4 (1993). If the child should not wish to testify or would be harmed by being forced to testify, the lawyer should seek a stipulation of the parties not to call the child as a witness or seek a protective order from the court. If the child is compelled to testify, the lawyer should seek to minimize the adverse consequences by seeking any appropriate accommodations permitted by local law, such as having the testimony taken informally, in chambers, without presence of the parents. See JOHN E.B. MYERS, 2 EVIDENCE IN CHILD ABUSE AND NEGLECT CASES ch. 8 (1992). The child should know whether the in-chambers testimony will be shared with others, such as parents who might be excluded from chambers, before agreeing to this forum. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child's wishes which will not be the child's fault.

D-7. Child Witness. The child's attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination and ensuring that testifying will cause minimum harm to the child.

Commentary

The lawyer's preparation of the child to testify should include attention to the child's developmental needs and abilities as well as to accommodations which should be made by the court and other lawyers. The lawyer should seek any necessary assistance from the court, including location of the testimony (in chambers, at a small table etc.), determination of who will be present, and restrictions on the manner and phrasing of questions posed to the child.

The accuracy of children's testimony is enhanced when they feel comfortable. See, generally, Karen Saywitz, Children in Court: Principles of Child Development for Judicial Application, in A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE 15 (Josephine Bulkley & Claire Sandt, eds., 1994). Courts have permitted support persons to be present in the courtroom, sometimes even with the child sitting on the person's lap to testify. Because child abuse and neglect cases are often closed to the public, special permission may be necessary to enable such persons to be present during hearings. Further, where the rule sequestering witnesses has been invoked, the order of witnesses may need to be changed or an exemption granted where the support person also will be a witness. The child should be asked whether he or she would like someone to be present, and if so, whom the child prefers. Typical support persons include parents, relatives, therapists, Court Appointed Special Advocates (CASA), social workers, victim-witness advocates, and members of the clergy. For some, presence of the child's attorney provides sufficient support.

D-8. Questioning the Child. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

Commentary

The phrasing of questions should take into consideration the law and research regarding children's testimony, memory, and suggestibility. See generally, Karen Saywitz, supra D -7; CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY (Gail S. Goodman & Bette L. Bottoms, eds. 1993); ANN HARALAMBIE, 2 HANDLING CHILD CUSTODY, ABUSE, AND ADOPTION CASES 24.09v24.22 (2nd ed. 1993); MYERS,

supra D-6, at Vol. 1, ch 2; Ellen Matthews & Karen Saywitz, *Child Victim Witness Manual*, 12/1 C.J.E.R.J. 40 (1992).

The information a child gives in interviews and during testimony is often misleading because the adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. See WALKER, SUPRA, A-3 Commentary. The child's attorney must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out any developmentally inappropriate phrasing.

D-9. Challenges to Child's Testimony/Statements. The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

Commentary

Many jurisdictions have abolished presumptive ages of competency. See HARALAMBIE, SUPRA D-8 AT 24.17. The jurisdictions which have rejected presumptive ages for testimonial competency have applied more flexible, case-by-case analyses. See Louis I. Parley, Representing Children in Custody Litigation, 11 J. AM. ACAD. MATRIM. LAW. 45, 48 (Winter 1993). Competency to testify involves the abilities to perceive and relate.

If necessary, the child's attorney should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child on those bases. See generally, Karen Saywitz, supra D-8 at 15; CHILD VICTIMS, SUPRA D-8; Haralambie, supra D-8; J. MYERS, SUPRA D-8; Matthews & Saywitz, supra D-8.

D-10. Jury Selection. In those states in which a jury trial is possible, the child's attorney should participate in jury selection and drafting jury instructions.

D-11. Conclusion of Hearing. If appropriate, the child's attorney should make a closing argument, and provide proposed findings of fact and conclusions of law. The child's attorney should ensure that a written order is entered.

Commentary

One of the values of having a trained child's attorney is such a lawyer can often present creative alternative solutions to the court. Further, the child's attorney is able to argue the child's interests from the child's perspective, keeping the case focused on the child's needs and the effect of various dispositions on the child.

D-12. Expanded Scope of Representation. The child's attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

(1) Child support;
(2) Delinquency or status offender matters;
(3) SSI and other public benefits;
(4) Custody;
(5) Guardianship;
(6) Paternity;
(7) Personal injury;
(8) School/education issues, especially for a child with disabilities;
(9) Mental health proceedings;
(10) Termination of parental rights; and

(11) Adoption.

Commentary

The child's interests may be served through proceedings not connected with the case in which the child's attorney is participating. In such cases the lawyer may be able to secure assistance for the child by filing or participating in other actions. See, e.g., In re Appeal in Pima County Juvenile Action No. S-113432, 872 P.2d 1240 (Ariz. Ct. App. 1994). With an older child or a child with involved parents, the child's attorney may not need court authority to pursue other services. For instance, federal law allows the parent to control special education. A Unified Child and Family Court Model would allow for consistency of representation between related court proceedings, such as mental health or juvenile justice.

D-13. Obligations after Disposition. The child's attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.

Commentary

Representing a child should reflect the passage of time and the changing needs of the child. The bulk of the child's attorney's work often comes after the initial hearing, including ongoing permanency planning issues, six month reviews, case plan reviews, issues of termination, and so forth. The average length of stay in foster care is over five years in some jurisdictions. Often a child's case workers, therapists, other service providers or even placements change while the case is still pending. Different judges may hear various phases of the case. The child's attorney may be the only source of continuity for the child. Such continuity not only provides the child with a stable point of contact, but also may represent the institutional memory of case facts and procedural history for the agency and court. The child's attorney should stay in touch with the child, third party caretakers, case workers, and service providers throughout the term of appointment to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution.

Generally it is preferable for the lawyer to remain involved so long as the case is pending to enable the child's interest to be addressed from the child's perspective at all stages. Like the JUVENILE JUSTICE STANDARDS, these ABUSE AND NEGLECT STANDARDS require ongoing appointment and active representation as long as the court retains jurisdiction over the child. To the extent that these are separate proceedings in some jurisdictions, the child's attorney should seek reappointment. Where reappointment is not feasible, the child's attorney should provide records and information about the case and cooperate with the successor to ensure continuity of representation.

E. POST-HEARING

E-1. Review of Court's Order. The child's attorney should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

E-2. Communicate Order to Child. The child's attorney should discuss the order and its consequences with the child.

Commentary

The child is entitled to understand what the court has done and what that means to the child, at least with respect to those portions of the order that directly affect the child. Children may assume that orders are final and not subject to change. Therefore, the lawyer should explain whether the order may be modified at another hearing, or whether the actions of the parties may affect how the order is carried out. For example, an order may permit the agency to return the child to the parent if certain goals are accomplished.

E-3. Implementation. The child's attorney should monitor the implementation of the court's orders and communicate

to the responsible agency and, if necessary, the court, any non-compliance.

Commentary

The lawyer should ensure that services are provided and that the court's orders are implemented in a complete and timely fashion. In order to address problems with implementation, the lawyer should stay in touch with the child, case worker, third party caretakers, and service providers between review hearings. The lawyer should consider filing any necessary motions, including those for civil or criminal contempt, to compel implementation. See, RESOURCE GUIDELINES, at 23.

F. APPEAL

F-1. Decision to Appeal. The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

Commentary

The lawyer should explain to the child not only the legal possibility of an appeal, but also the ramifications of filing an appeal, including the potential for delaying implementation of services or placement options. The lawyer should also explain whether the trial court's orders will be stayed pending appeal and what the agency and trial court may do pending a final decision.

F-2. Withdrawal. If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

F-3. Participation in Appeal. The child's attorney should participate in an appeal filed by another party unless discharged.

Commentary

The child's attorney should take a position in any appeal filed by the parent, agency, or other party. In some jurisdictions, the lawyer's appointment does not include representation on appeal. If the child's interests are affected by the issues raised in the appeal, the lawyer should seek an appointment on appeal or seek appointment of appellate counsel to represent the child's position in the appeal.

F-4. Conclusion of Appeal. When the decision is received, the child's attorney should explain the outcome of the case to the child.

Commentary

As with other court decisions, the lawyer should explain in terms the child can understand the nature and consequences of the appellate decision. In addition, the lawyer should explain whether there are further appellate remedies and what more, if anything, will be done in the trial court following the decision.

F-5. Cessation of Representation. The child's attorney should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.

Commentary

When the representation ends, the child's lawyer should explain in a developmentally appropriate manner why the representation is ending and how the child can obtain assistance in the future should it become necessary. It is important for there to be closure between the child and the lawyer.

PART II– ENHANCING THE JUDICIAL ROLE IN CHILD REPRESENTATION

PREFACE

Enhancing the legal representation provided by court-appointed lawyers for children has long been a special concern of the American Bar Association [*see, e.g.,* JUVENILE JUSTICE STANDARDS RELATING TO *COUNSEL FOR PRIVATE PARTIES* (1979); ABA Policy Resolutions on Representation of Children (Appendix). Yet, no matter how carefully a bar association, legislature, or court defines the duties of lawyers representing children, practice will only improve if judicial administrators and trial judges play a stronger role in the selection, training, oversight, and prompt payment of court-appointed lawyers in child abuse/neglect and child custody/visitation cases.

The importance of the court's role in helping assure competent representation of children is noted in the JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGANIZATION AND ADMINISTRATION (1980) which state in the Commentary to 3.4D that effective representation of parties is "essential" and that the presiding judge of a court "might need to use his or her position to achieve" it. In its RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995), the National Council of Juvenile and Family Court Judges stated, "Juvenile and family courts should take active steps to ensure that the parties in child abuse and neglect cases have access to competent representation. . . ." In jurisdictions which engage nonlawyers to represent a child's interests, the court should ensure they have access to legal representation.

These Abuse and Neglect Standards, like the RESOURCE GUIDELINES, recognize that the courts have a great ability to influence positively the quality of counsel through setting judicial prerequisites for lawyer appointments including requirements for experience and training, imposing sanctions for violation of standards (such as terminating a lawyer's appointment to represent a specific child, denying further appointments, or even fines or referrals to the state bar committee for professional responsibility). The following Standards are intended to assist the judiciary in using its authority to accomplish the goal of quality representation for all children before the court in abuse/neglect related proceedings.

G. THE COURT'S ROLE IN STRUCTURING CHILD REPRESENTATION

G-1. Assuring Independence of the Child's Attorney. The child's attorney should be independent from the court, court services, the parties, and the state.

Commentary

To help assure that the child's attorney is not compromised in his or her independent action, these Standards propose that the child's lawyer be independent from other participants in the litigation. "Independence" does not mean that a lawyer may not receive payment from a court, a government entity (e.g., program funding from social services or justice agencies), or even from a parent, relative, or other adult so long as the lawyer retains the full authority for independent action. For ethical conflict reasons, however, lawyers should never accept compensation as retained counsel for the child from a parent accused of abusing or neglecting the child. The child's attorney should not prejudge the case. The concept of independence includes being free from prejudice and other limitations to uncompromised representation.

JUVENILE JUSTICE STANDARD *2.1(d) states that plans for providing counsel for children "must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship." The Commentary strongly asserts there is "no justification for . . . judicial preference" to compromise a lawyer's relationship with the child client and notes the "willingness of some judges to direct lawyers' performance and thereby compromise their independence."*

G-2. Establishing Uniform Representation Rules. The administrative office for the state trial, family, or juvenile court system should cause to be published and disseminated to all relevant courts a set of uniform,

written rules and procedures for court-appointed lawyers for minor children.

Commentary

Although uniform rules of court to govern the processing of various types of child-related judicial proceedings have become common, it is still rare for those rules to address comprehensively the manner and scope of representation for children. Many lawyers representing children are unclear as to the court's expectations. Courts in different communities, or even judges within the same court, may have differing views regarding the manner of child representation. These Standards promote statewide uniformity by calling for written publication and distribution of state rules and procedures for the child's attorney.

G-3. Enhancing Lawyer Relationships with Other Court Connected Personnel. Courts that operate or utilize Court Appointed Special Advocate (CASA) and other nonlawyer guardians ad litem, and courts that administer nonjudicial foster care review bodies, should assure that these programs and the individuals performing those roles are trained to understand the role of the child's attorney. There needs to be effective coordination of their efforts with the activities of the child's attorney, and they need to involve the child's attorney in their work. The court should require that reports from agencies be prepared and presented to the parties in a timely fashion.

Commentary

Many courts now regularly involve nonlawyer advocates for children in various capacities. Some courts also operate programs that, outside of the courtroom, review the status of children in foster care or other out-of-home placements. It is critical that these activities are appropriately linked to the work of the child's attorney, and that the cour through training, policies, and protocols helps assure that those performing the nonlegal tasks (1) understand the importance and elements of the role of the child's attorney, and (2) work cooperatively with such lawyers. The court should keep abreast of all the different representatives involved with the child, the attorney, social worker for government or private agency, CASA volunteer, guardian ad litem, school mediator, counselors, etc.

H. THE COURT'S ROLE IN APPOINTING THE CHILD'S ATTORNEY

H-1. Timing of Appointments. The child's attorney should be appointed immediately after the earliest of:

(1) The involuntary removal of the child for placement due to allegations of neglect, abuse or abandonment;
(2) The filing of a petition alleging child abuse and neglect, for review of foster care placement, or for termination of parental rights; or
(3) Allegations of child maltreatment, based upon sufficient cause, are made by a party in the context of proceedings that were not originally initiated by a petition alleging child maltreatment.

Commentary

These ABUSE AND NEGLECT STANDARDS take the position that courts must assure the appointment of a lawyer for a child as soon as practical (ideally, on the day the court first has jurisdiction over the case, and hopefully, no later than the next business day). The three situations are described separately because:

(1) A court may authorize, or otherwise learn of, a child's removal from home prior to the time a formal petition is instituted. Lawyer representation of (and, ideally, contact with) the child prior to the initial court hearing following removal (which in some cases may be several days) is important to protect the child's interests;

(2) Once a petition has been filed by a government agency (or, where authorized, by a hospital or other agency with child protection responsibilities), for any reason related to a child's need for protection, the child should have prompt access to a lawyer; and

(3) There are cases (such as custody, visitation, and guardianship disputes and family-related abductions of children) where allegations, with sufficient cause, of serious physical abuse, sexual molestation, or severe neglect of a child are presented to the court not by a government agency (i.e., child protective services) but by a parent, guardian, or other relative. The need of a child for competent, independent representation by a lawyer is just as great in situation (3) as with cases in areas (1) and (2).

H-2. Entry of Compensation Orders. At the time the court appoints a child's attorney, it should enter a written order addressing compensation and expense costs for that lawyer, unless these are otherwise formally provided for by agreement or contract with the court, or through another government agency.

Commentary

Compensation and expense reimbursement of individual lawyers should be addressed in a specific written court order is based on a need for all lawyers representing maltreated children to have a uniform understanding of how they will be paid. Commentary to Section 2.1(b) of the JUVENILE JUSTICE STANDARDS observes that it is common for court-appointed lawyers to be confused about the availability of reimbursement of expenses for case-related work.

H-3. Immediate Provision of Access. Unless otherwise provided for, the court should upon appointment of a child's attorney, enter an order authorizing that lawyer access between the child and the lawyer and to all privileged information regarding the child, without the necessity of a further release. The authorization should include, but not be limited to: social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, and school records.

Commentary

Because many service providers do not understand or recognize the nature of the role of the lawyer for the child or that person's importance in the court proceeding, these Standards call for the routine use of a written court order that clarifies the lawyers right to contact with their child client and perusal of child-related records. Parents, other caretakers, or government social service agencies should not unreasonably interfere with a lawyer's ability to have face-to-face contact with the child client nor to obtain relevant information about the child's social services, education, mental health, etc. Such interference disrupts the lawyer's ability to control the representation and undermines his or her independence as the child's legal representative.

H-4. Lawyer Eligibility for and Method of Appointment. Where the court makes individual appointment of counsel, unless impractical, before making the appointment, the court should determine that the lawyer has been trained in representation of children and skilled in litigation (or is working under the supervision of an lawyer who is skilled in litigation). Whenever possible, the trial judge should ensure that the child's attorney has had sufficient training in child advocacy and is familiar with these Standards. The trial judge should also ensure that (unless there is specific reason to appoint a specific lawyer because of their special qualifications related to the case, or where a lawyer's current caseload would prevent them from adequately handling the case) individual lawyers are appointed from the ranks of eligible members of the bar under a fair, systematic, and sequential appointment plan.

Commentary

The JUVENILE JUSTICE STANDARDS 2.2(c) provides that where counsel is assigned by the court, this lawyer should be drawn from "an adequate pool of competent attorneys." In general, such competency can only be gained through relevant continuing legal education and practice-related experience. Those Standards also promote the use of a rational court appointment process drawing from the ranks of qualified lawyers. The Abuse and Neglect Standards reject the concept of ad hoc appointments of counsel that are made without regard to prior training or practice.

H-5. Permitting Child to Retain a Lawyer. The court should permit the child to be represented by a retained private lawyer if it determines that this lawyer is the child's independent choice, and such counsel should be substituted for the appointed lawyer. A person with a legitimate interest in the child's welfare may retain private counsel for the child and/or pay for such representation, and that person should be permitted to serve as the child's attorney, subject to approval of the court. Such approval should not be given if the child opposes the lawyer's representation or if the court determines that there will be a conflict of interest. The court should make it clear that the person paying for the retained lawyer does not have the right to direct the representation of the child or to receive privileged information about the case from the lawyer.

Commentary

Although such representation is rare, there are situations where a child, or someone acting on a child's behalf, seeks out legal representation and wishes that this lawyer, rather than one appointed by the court under the normal appointment process, be recognized as the sole legal representative of the child. Sometimes, judges have refused to accept the formal appearances filed by such retained lawyers. These Standards propose to permit, under carefully scrutinized conditions, the substitution of a court-appointed lawyer with the retained counsel for a child.

I. THE COURT'S ROLE IN LAWYER TRAINING

I-1. Judicial Involvement in Lawyer Training. Trial judges who are regularly involved in child-related matters should participate in training for the child's attorney conducted by the courts, the bar, or any other group.

Commentary

JUVENILE JUSTICE STANDARDS 2.1 indicates that it is the responsibility of the courts (among others) to ensure that competent counsel are available to represent children before the courts. That Standard further suggests that lawyers should "be encouraged" to qualify themselves for participation in child-related cases "through formal training." The Abuse and Neglect Standards go further by suggesting that judges should personally take part in educational programs, whether or not the court conducts them. The National Council of Juvenile and Family Court Judges has suggested that courts can play in important role in training lawyers in child abuse and neglect cases, and that judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars. See, RESOURCE GUIDELINES, at 22.

I-2. Content of Lawyer Training. The appropriate state administrative office of the trial, family, or juvenile courts should provide educational programs, live or on tape, on the role of a child's attorney. At a minimum, the requisite training should include:

(1) Information about relevant federal and state laws and agency regulations;
(2) Information about relevant court decisions and court rules;
(3) Overview of the court process and key personnel in child-related litigation;
(4) Description of applicable guidelines and standards for representation;
(5) Focus on child development, needs, and abilities;
(6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
(7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;
(8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and
(9) Provision of written material (e.g., representation manuals, checklists, sample forms), including

listings of useful material available from other sources.

Commentary

The ABUSE AND NEGLECT STANDARDS take the position that it is not enough that judges mandate the training of lawyers, or that judges participate in such training. Rather, they call upon the courts to play a key role in training by actually sponsoring (e.g., funding) training opportunities. The pivotal nature of the judiciary's role in educating lawyers means that courts may, on appropriate occasions, stop the hearing of cases on days when training is held so that both lawyers and judges may freely attend without docket conflicts. The required elements of training are based on a review of well-regarded lawyer training offered throughout the country, RESOURCE GUIDELINES, and many existing manuals that help guide lawyers in representing children.

I-3. Continuing Training for Lawyers. The court system should also assure that there are periodic opportunities for lawyers who have taken the "basic" training to receive continuing and "new developments" training.

Commentary

Many courts and judicial organizations recognize that rapid changes occur because of new federal and state legislation, appellate court decisions, systemic reforms, and responses to professional literature. Continuing education opportunities are critical to maintain a high level of performance. These Standards call for courts to afford these "advanced" or "periodic" training to lawyers who represent children in abuse and neglect related cases.

I-4. Provision of Mentorship Opportunities. Courts should provide individual court-appointed lawyers who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor.

Commentary

In addition to training, particularly for lawyers who work as sole practitioners or in firms that do not specialize in child representation, courts can provide a useful mechanism to help educate new lawyers for children by pairing them with more experienced advocates. One specific thing courts can do is to provide lawyers new to representing children with the opportunity to be assisted by more experienced lawyers in their jurisdiction. Some courts actually require lawyers to "second chair" cases before taking an appointment to a child abuse or neglect case. See, RESOURCE GUIDELINES, at 22.

J. THE COURT'S ROLE IN LAWYER COMPENSATION

J-1. Assuring Adequate Compensation. A child's attorney should receive adequate and timely compensation throughout the term of appointment that reflects the complexity of the case and includes both in court and out-of-court preparation, participation in case reviews and post-dispositional hearings, and involvement in appeals. To the extent that the court arranges for child representation through contract or agreement with a program in which lawyers represent children, the court should assure that the rate of payment for these legal services is commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.

Commentary

JUVENILE JUSTICE STANDARDS 2.1(b) recognize that lawyers for children should be entitled to reasonable compensation for both time and services performed "according to prevailing professional standards," which takes into account the "skill required to perform...properly," and which considers the need for the lawyer to perform both counseling and resource identification/evaluation activities. The RESOURCE GUIDELINES, at 22, state that it is "necessary to provide reasonable compensation" for improved lawyer representation of children and that where necessary judges should "urge state legislatures and local governing bodies to provide sufficient funding" for quality legal representation.

Because some courts currently compensate lawyers only for time spent in court at the adjudicative or initial disposition stage of cases, these Standards clarify that compensation is to be provided for out-of-court preparation time, as well as for the lawyer's involvement in case reviews and appeals. "Out-of-court preparation" may include, for example, a lawyer's participation in social services or school case conferences relating to the client.

These Standards also call for the level of compensation where lawyers are working under contract with the court to provide child representation to be comparable with what experienced individual counsel would receive from the court. Although courts may, and are encouraged to, seek high quality child representation through enlistment of special children's law offices, law firms, and other programs, the motive should not be a significantly different (i.e., lower) level of financial compensation for the lawyers who provide the representation.

J-2. Supporting Associated Costs. The child's attorney should have access to (or be provided with reimbursement for experts, investigative services, paralegals, research costs, and other services, such as copying medical records, long distance phone calls, service of process, and transcripts of hearings as requested.

Commentary

The ABUSE AND NEGLECT STANDARDS expand upon JUVENILE JUSTICE STANDARDS *2.1(c) which recognizes that a child's attorney should have access to "investigatory, expert and other nonlegal services" as a fundamental part of providing competent representation.*

J-3. Reviewing Payment Requests. The trial judge should review requests for compensation for reasonableness based upon the complexity of the case and the hours expended.

Commentary

These Standards implicitly reject the practice of judges arbitrarily "cutting down" the size of lawyer requests for compensation and would limit a judge's ability to reduce the amount of a per/case payment request from a child's attorney unless the request is deemed unreasonable based upon two factors: case complexity and time spent.

J-4. Keeping Compensation Levels Uniform. Each state should set a uniform level of compensation for lawyers appointed by the courts to represent children. Any per/hour level of compensation should be the same for all representation of children in all types of child abuse and neglect-related proceedings.

Commentary

These Standards implicitly reject the concept (and practice) of different courts within a state paying different levels of compensation for lawyers representing children. They call for a uniform approach, established on a statewide basis, towards the setting of payment guidelines.

K. THE COURT'S ROLE IN RECORD ACCESS BY LAWYERS

K-1. Authorizing Lawyer Access. The court should enter an order in child abuse and neglect cases authorizing the child's attorney access to all privileged information regarding the child, without the necessity for a further release.

Commentary

This Standard requires uniform judicial assistance to remove a common barrier to effective representation, i.e., administrative denial of access to significant records concerning the child. The language supports the universal issuance of broadly-worded court orders that grant a child's attorney full access to information (from individuals) or records (from agencies) concerning the child.

K-2. Providing Broad Scope Orders. The authorization order granting the child's attorney access to records should include social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, school, and other records relevant to the case.

Commentary

This Standard further elaborates upon the universal application that the court's access order should be given, by listing examples of the most common agency records that should be covered by the court order.

L. THE COURT'S ROLE IN ASSURING REASONABLE LAWYER CASELOADS

L-1. Controlling Lawyer Caseloads. Trial court judges should control the size of court-appointed caseloads of individual lawyers representing children, the caseloads of government agency-funded lawyers for children, or court contracts/agreements with lawyers for such representation. Courts should take steps to assure that lawyers appointed to represent children, or lawyers otherwise providing such representation, do not have such a large open number of cases that they are unable to abide by Part I of these Standards.

Commentary

THE ABUSE AND NEGLECT STANDARDS go further than JUVENILE JUSTICE STANDARD *2.2(b) which recognize the "responsibility of every defender office to ensure that its personnel can offer prompt, full, and effective counseling and representation to each (child) client" and that it "should not accept more assignments than its staff can adequately discharge" by specifically calling upon the courts to help keep lawyer caseloads from getting out of control. The Commentary to 2.2.(b) indicates that: Caseloads must not be exceeded where to do so would "compel lawyers to forego the extensive fact investigation required in both contested and uncontested cases, or to be less than scrupulously careful in preparation for trial, or to forego legal research necessary to develop a theory of representation." We would add: "...or to monitor the implementation of court orders and agency case plans in order to help assure permanency for the child."*

L-2. Taking Supportive Caseload Actions. If judges or court administrators become aware that individual lawyers are close to, or exceeding, the levels suggested in these Standards, they should take one or more of the following steps:

(1) Expand, with the aid of the bar and children's advocacy groups, the size of the list from which appointments are made;
(2) Alert relevant government or private agency administrators that their lawyers have an excessive caseload problem;
(3) Recruit law firms or special child advocacy law programs to engage in child representation;
(4) Review any court contracts/agreements for child representation and amend them accordingly, so that additional lawyers can be compensated for case representation time; and
(5) Alert state judicial, executive, and legislative branch leaders that excessive caseloads jeopardize the ability of lawyers to competently represent children pursuant to state-approved guidelines, and seek funds for increasing the number of lawyers available to represent children.

Commentary

This Standard provides courts with a range of possible actions when individual lawyer caseloads appear to be inappropriately high.

APPENDIX

Previous American Bar Association Policies Related to Legal Representation of Abused and Neglected Children

GUARDIANS AD LITEM
FEBRUARY 1992

BE IT RESOLVED, that the American Bar Association urges:

(1) Every state and territory to meet the full intent of the Federal Child Abuse Prevention and Treatment Act, whereby every child in the United States who is the subject of a civil child protection related judicial proceedings will be represented at all stages of these proceedings by a fully-trained, monitored, and evaluated guardian ad litem in addition to appointed legal counsel.

(2) That state, territory and local bar associations and law schools become involved in setting standards of practice for such guardians ad litem, clarify the ethical responsibilities of these individuals and establish minimum ethical performance requirements for their work, and provide comprehensive multidisciplinary training for all who serve as such guardians ad litem.

(3) That in every state and territory, where judges are given discretion to appoint a guardian ad litem in private child custody and visitation related proceedings, the bench and bar jointly develop guidelines to aid judges in determining when such an appointment is necessary to protect the best interests of the child.

COURT-APPOINTED SPECIAL ADVOCATES
AUGUST 1989

BE IT RESOLVED, that the American Bar Association endorses the concept of utilizing carefully selected, well trained lay volunteers, Court Appointed Special Advocates, in addition to providing attorney representation, in dependency proceedings to assist the court in determining what is in the best interests of abused and neglected children.

BE IT FURTHER RESOLVED, that the American Bar Association encourages its members to support the development of CASA programs in their communities.

COUNSEL FOR CHILDREN ENHANCEMENT
FEBRUARY 1987

BE IT RESOLVED, that the American Bar Association requests State and local bar associations to determine the extent to which statutory law and court rules in their States guarantee the right to counsel for children in juvenile court proceedings; and

BE IT FURTHER RESOLVED, that State and local bar associations are urged to actively participate and support amendments to the statutory law and court rules in their State to bring them in to compliance with the Institute of Judicial Administration/American Bar Association Standards Relating to Counsel for Private Parties; and

BE IT FURTHER RESOLVED, that State and local bar associations are requested to ascertain the extent to which, irrespective of the language in their State statutory laws and court rules, counsel is in fact provided for children in juvenile court proceedings and the extent to which the quality of representation is consistent with the standards and policies of the American Bar Association; and

BE IT FURTHER RESOLVED, that State and local bar associations are urged to actively support programs of training and education to ensure that lawyers practicing in juvenile court are aware of the American Bar Association's standards relating to representation of children and provide advocacy which meets those standards.

BAR ASSOCIATION AND ATTORNEY ACTION
FEBRUARY 1984

BE IT RESOLVED, that the American Bar Association urges the members of the legal profession, as well as state and local bar associations, to respond to the needs of children by directing attention to issues affecting children including, but not limited to: ... (7) establishment of guardian ad litem programs.

BAR AND ATTORNEY INVOLVEMENT IN CHILD PROTECTION CASES
AUGUST 1981

BE IT RESOLVED, that the American Bar Association encourages individual attorneys and state and local bar organizations to work more actively to improve the handling of cases involving abused and neglected children as well as children in foster care. Specifically, attorneys should form appropriate committees and groups within the bar to ... work to assure quality legal representation for children....

JUVENILE JUSTICE STANDARDS
FEBRUARY 1979

BE IT RESOLVED, that the American Bar Association adopt (the volume of the) Standards for Juvenile Justice (entitled) Counsel for Private Parties...

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 8-9, 2011

RESOLUTION

RESOLVED, That the American Bar Association adopts the *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*, dated August, 2011.

ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings [1]

SECTION 1. DEFINITIONS. In this [act]:

(a) "Abuse and neglect proceeding" means a court proceeding under [cite state statute] for protection of a child from abuse or neglect or a court proceeding under [cite state statute] in which termination of parental rights is at issue.[2] These proceedings include:

(1) abuse;

(2) neglect;

(3) dependency;

(4) child in voluntary placement in state care;

(5) termination of parental rights;

(6) permanency hearings; and

(7) post termination of parental rights through adoption or other permanency proceeding.

(b) A child is:

(1) an individual under the age of 18; or

(2) an individual under the age of 22 who remains under the jurisdiction of the juvenile court.

(c) "Child's lawyer" (or "lawyer for children") means a lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality and competent representation, to the child as is due an adult client, subject to Section 7 of this Act.[3]

(d) "Best interest advocate" means an individual, not functioning or intended to function as the child's lawyer, appointed by the court to assist the court in determining the best interests of the child.

(e) "Developmental level" is a measure of the ability to communicate and understand others, taking into account such factors as age, mental capacity, level of

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[1] This Model Act was drafted under the auspices of the ABA Section of Litigation Children's Rights Litigation Committee with the assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some language from the provisions of the NCCUSL Representation of Children in Abuse, Neglect, and Custody Proceedings Act.

[2] NCCUSL, 2006 *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*, Sec. 2(2) [Hereinafter NCCUSL Act]

[3] *Id.*, Sec. 2(6); American Bar Association, *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, Part I, Sec A-1, 29 Fam. L. Q. 375 (1995). The standards were formally adopted by the ABA House of Delegates in 1996. [Hereinafter ABA Standards].

education, cultural background, and degree of language acquisition.[4]

Legislative Note: States should implement a mechanism to bring children into court when they have been voluntarily placed into state care, if such procedures do not already exist. Court action should be triggered after a specific number of days in voluntary care (not fewer than 30 days, but not more than 90 days).
Commentary:

Under the Act, a "child's lawyer" is a client-directed lawyer in a traditional attorney-client relationship with the child. A "best interests advocate" does not function as the child's lawyer and is not bound by the child's expressed wishes in determining what to advocate, although the best interests advocate should consider those wishes.

The best interest advocate may be a lawyer or a lay person, such as a court-appointed special advocate, or CASA. The best interests advocate assists the court in determining the best interests of a child and will therefore perform many of the functions formerly attributable to guardians *ad litem*, but best interests advocates are not to function as the child's lawyer. A lawyer appointed as a best interest advocate shall function as otherwise set forth in state law.

SECTION 2. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.

(a) This [act] applies to an abuse and neglect proceeding pending or commenced on or after [the effective date of this act].

(b) The child in these proceedings is a party.

SECTION 3. APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING.

(a) The court shall appoint a child's lawyer for each child who is the subject of a petition in an abuse and neglect proceeding. The appointment of a child's lawyer must be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing.

(b) In addition to the appointment of a child's lawyer, the court may appoint a best interest advocate to assist the court in determining the child's best interests.

(c) The court may appoint one child's lawyer to represent siblings if there is no conflict of interest as defined under the applicable rules of professional conduct.[5] **The court may appoint additional counsel to represent individual siblings at a child's lawyer's request due to a conflict of interest between or among the siblings.**

(d) The applicable rules of professional conduct and any law governing the obligations of lawyers to their clients shall apply to such appointed lawyers for children.

(e) The appointed child's lawyer shall represent the child at all stages of the

[4] ABA Standards, Part I, Sec A-3.
[5] NCCUSL Act, Sec. 4(c); *see also* ABA Standards, Part I, Sec B-1

proceedings, unless otherwise discharged by order of court.[6]

(f) A child's right to counsel may not be waived at any court proceeding.

Commentary:

This act recognizes the right of every child to have quality legal representation and a voice in any abuse, neglect, dependency, or termination of parental rights proceeding, regardless of developmental level. Nothing in this Act precludes a child from retaining a lawyer. States should provide a lawyer to a child who has been placed into state custody through a voluntary placement arrangement. The fact that the child is in the state's custody through the parent's voluntary decision should not diminish the child's entitlement to a lawyer.

A best interest advocate does not replace the appointment of a lawyer for the child. A best interest advocate serves to provide guidance to the court with respect to the child's best interest and does not establish a lawyer-client relationship with the child. Nothing in this Act restricts a court's ability to appoint a best interest advocate in any proceeding. Because this Act deals specifically with lawyers for children, it will not further address the role of the best interest advocate.

The child is entitled to conflict-free representation and the applicable rules of professional conduct must be applied in the same manner as they would be applied for lawyers for adults. A lawyer representing siblings should maintain the same lawyer-client relationship with respect to each child.

SECTION 4. QUALIFICATIONS OF THE CHILD'S LAWYER.

(a) The court shall appoint as the child's lawyer an individual who is qualified through training and experience, according to standards established by [insert reference to source of standards].

(b) Lawyers for children shall receive initial training and annual continuing legal education that is specific to child welfare law. Lawyers for children shall be familiar with all relevant federal, state, and local applicable laws.

(c) Lawyers for children shall not be appointed to new cases when their present caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer's practice spent on abuse and neglect cases, the complexity of the case, and other relevant factors.

Legislative Note: States that adopt training standards and standards of practice for children's lawyers should include the bracketed portion of this section and insert a reference to the state laws, court rules, or administrative guidelines containing those standards.[7]

Jurisdictions are urged to specify a case limit at the time of passage of this Act.

[6] ABA Standards, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

[7] ABA Standards, Part II, Sec L-1-2.

Commentary:

States should establish minimum training requirements for lawyers who represent children. Such training should focus on applicable law, skills needed to develop a meaningful lawyer-client relationship with child-clients, techniques to assess capacity in children, as well as the many interdisciplinary issues that arise in child welfare cases.

The lawyer needs to spend enough time on each abuse and neglect case to establish a lawyer-client relationship and zealously advocate for the client. A lawyer's caseload must allow realistic performance of functions assigned to the lawyer under the [Act]. The amount of time and the number of children a lawyer can represent effectively will differ based on a number of factors, including type of case, the demands of the jurisdiction, whether the lawyer is affiliated with a children's law office, whether the lawyer is assisted by investigators or other child welfare professionals, and the percent of the lawyer's practice spent on abuse and neglect cases. States are encouraged to conduct caseload analyses to determine guidelines for lawyers representing children in abuse and neglect cases.

SECTION 5. ORDER OF APPOINTMENT.

(a) Subject to subsection (b), an order of appointment of a child's lawyer shall be in writing and on the record, identify the lawyer who will act in that capacity, and clearly set forth the terms of the appointment, including the reasons for the appointment, rights of access as provided under Section 8, and applicable terms of compensation as provided under Section 12.

(b) In an order of appointment issued under subsection (a), the court may identify a private organization, law school clinical program or governmental program through which a child's lawyer will be provided. The organization or program shall designate the lawyer who will act in that capacity and notify the parties and the court of the name of the assigned lawyer as soon as practicable.[8] Additionally, the organization or program shall notify the parties and the court of any changes in the individual assignment.

SECTION 6. DURATION OF APPOINTMENT.

Unless otherwise provided by a court order, an appointment of a child's lawyer in an abuse and neglect proceeding continues in effect until the lawyer is discharged by court order or the case is dismissed.[9] The appointment includes all stages thereof, from removal from the home or initial appointment through all available appellate proceedings. With the permission of the court, the lawyer may arrange for supplemental or separate counsel to handle proceedings at an appellate stage.[10]

[8] NCCUSL Act, Sec. 9
[9] *Id.*, Sec. 10(a)
[10] ABA Standards, Part I, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1.; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

Commentary:

As long as the child remains in state custody, even if the state custody is long-term or permanent, the child should retain the right to counsel so that the child's lawyer can deal with the issues that may arise while the child is in custody but the case is not before the court.

SECTION 7. DUTIES OF CHILD'S LAWYER AND SCOPE OF REPRESENTATION.

(a) A child's lawyer shall participate in any proceeding concerning the child with the same rights and obligations as any other lawyer for a party to the proceeding.

(b) The duties of a child's lawyer include, but are not limited to:

(1) taking all steps reasonably necessary to represent the client in the proceeding, including but not limited to: interviewing and counseling the client, preparing a case theory and strategy, preparing for and participating in negotiations and hearings, drafting and submitting motions, memoranda and orders, and such other steps as established by the applicable standards of practice for lawyers acting on behalf of children in this jurisdiction;

(2) reviewing and accepting or declining, after consultation with the client, any proposed stipulation for an order affecting the child and explaining to the court the basis for any opposition;

(3) taking action the lawyer considers appropriate to expedite the proceeding and the resolution of contested issues;

(4) where appropriate, after consultation with the client, discussing the possibility of settlement or the use of alternative forms of dispute resolution and participating in such processes to the extent permitted under the law of this state;[11]

(5) meeting with the child prior to each hearing and for at least one in-person meeting every quarter;

(6) where appropriate and consistent with both confidentiality and the child's legal interests, consulting with the best interests advocate;

(7) prior to every hearing, investigating and taking necessary legal action regarding the child's medical, mental health, social, education, and overall well-being;

(8) visiting the home, residence, or any prospective residence of the child, including each time the placement is changed;

(9) seeking court orders or taking any other necessary steps in accordance with the child's direction to ensure that the child's health, mental health, educational, developmental, cultural and placement needs are met; and

(10) representing the child in all proceedings affecting the issues before the court, including hearings on appeal or referring the child's case to the appropriate

[11] NCCUSL Act, Sec. 11 Alternative A..

appellate counsel as provided for by/ mandated by [inset local rule/law etc].

Commentary:

The national standards mentioned in (b)(1) include the *ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases.*

In order to comply with the duties outlined in this section, lawyers must have caseloads that allow realistic performance of these functions.

The child's lawyer may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment.[12] Such ancillary matters include special education, school discipline hearings, mental health treatment, delinquency or criminal issues, status offender matters, guardianship, adoption, paternity, probate, immigration matters, medical care coverage, SSI eligibility, youth transitioning out of care issues, postsecondary education opportunity qualification, and tort actions for injury, as appropriate.[13] The lawyer should make every effort to ensure that the child is represented by legal counsel in all ancillary legal proceedings, either personally, when the lawyer is competent to do so, or through referral or collaboration. Having one lawyer represent the child across multiple proceedings is valuable because the lawyer is better able to understand and fully appreciate the various issues as they arise and how those issues may affect other proceedings.

(c) When the child is capable of directing the representation by expressing his or her objectives, the child's lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct. In a developmentally appropriate manner, the lawyer shall elicit the child's wishes and advise the child as to options.

Commentary:

The lawyer-client relationship for the child's lawyer is fundamentally indistinguishable from the lawyer-client relationship in any other situation and includes duties of client direction,[14] confidentiality,[15] diligence,[16] competence,[17] loyalty,[18] communication,[19] and the duty to provide independent advice.[20] Client direction requires the lawyer to abide by the client's decision about the objectives of the representation. In order for the child to have an independent voice in abuse and neglect proceedings, the lawyer shall advocate for the child's counseled and expressed

[12] ABA Standards, Part I, Section D-12.
[13] *Id.*
[14] ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2
[15] M.R. 1.6
[16] M.R. 1.3
[17] M.R. 1.1
[18] M.R. 1.7
[19] M.R. 1.4
[20] M.R. 2.1

wishes.[21] Moreover, providing the child with an independent and client-directed lawyer ensures that the child's legal rights and interests are adequately protected.

The child's lawyer needs to explain his or her role to the client and, if applicable, explain in what strictly limited circumstances the lawyer cannot advocate for the client's expressed wishes and in what circumstances the lawyer may be required to reveal confidential information. This explanation should occur during the first meeting so the client understands the terms of the relationship.

In addition to explaining the role of the child's lawyer, the lawyer should explain the legal process to the child in a developmentally appropriate manner as required by Rule 1.4 of the ABA Model Rules of Professional Conduct or its equivalent.[22] This explanation can and will change based on age, cognitive ability, and emotional maturity of the child. The lawyer needs to take the time to explain thoroughly and in a way that allows and encourages the child to ask questions and that ensures the child's understanding. The lawyer should also facilitate the child's participation in the proceeding (See Section 9).

In order to determine the objectives of the representation of the child, the child's lawyer should develop a relationship with the client. The lawyer should achieve a thorough knowledge of the child's circumstances and needs. The lawyer should visit the child in the child's home, school, or other appropriate place where the child is comfortable. The lawyer should observe the child's interactions with parents, foster parents, and other caregivers. The lawyer should maintain regular and ongoing contact with the child throughout the case.

The child's lawyer helps to make the child's wishes and voice heard but is not merely the child's mouthpiece. As with any lawyer, a child's lawyer is both an advocate and a counselor for the client. Without unduly influencing the child, the lawyer should advise the child by providing options and information to assist the child in making decisions. The lawyer should explain the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child, other family members, and future legal proceedings.[23] The lawyer should investigate the relevant facts, interview persons with significant knowledge of the child's history, review relevant records, and work with others in the case.

(d) The child's lawyer shall determine whether the child has diminished capacity pursuant to the Model Rules of Professional Conduct. {STATES MAY CONSIDER INSERTING THE FOLLOWING TWO SENTENCES:} [Under this subsection a child shall be presumed to be capable of directing representation at the age of ___. The presumption of diminished capacity is rebutted if, in the sole discretion of the lawyer, the child is deemed capable of directing representation.] In making the determination, the lawyer should consult the child and may consult other individuals or entities that can

[21] ABA Standards, commentary A-1
[22] M.R. 1.4
[23] M.R. 2.1

provide the child's lawyer with the information and assistance necessary to determine the child's ability to direct the representation.

When a child client has diminished capacity, the child's lawyer shall make a good faith effort to determine the child's needs and wishes. The lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client and fulfill the duties as outlined in Section 7(b) of this Act. During a temporary period or on a particular issue where a normal client-lawyer relationship is not reasonably possible to maintain, the child's lawyer shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination. The lawyer should take direction from the child as the child develops the capacity to direct the lawyer. The lawyer shall advise the court of the determination of capacity and any subsequent change in that determination.

Commentary:

A determination of incapacity may be incremental and issue-specific, thus enabling the child's lawyer to continue to function as a client-directed lawyer as to major questions in the proceeding. Determination of diminished capacity requires ongoing re-assessment. A child may be able to direct the lawyer with respect to a particular issue at one time but not another. Similarly, a child may be able to determine some positions in the case, but not others. For guidance in assessing diminished capacity, see the commentary to Section (e). The lawyer shall advise the court of the determination of capacity and any subsequent change in that determination.

In making a substituted judgment determination, the child's lawyer may wish to seek guidance from appropriate professionals and others with knowledge of the child, including the advice of an expert. A substituted judgment determination is not the same as determining the child's best interests; determination of a child's best interests remains solely the province of the court. Rather, it involves determining what the child would decide if he or she were able to make an adequately considered decision.[24] A lawyer should determine the child's position based on objective facts and information, not personal beliefs. To assess the needs and interests of *this* child, the lawyer should observe the child in his or her environment, and consult with experts.[25]

In formulating a substituted judgment position, the child's lawyer's advocacy should be child-centered, research-informed, permanency-driven, and holistic.[26] The child's needs and interests, not the adults' or professionals' interests, must be the center of all advocacy. For example, lawyers representing very young children must truly *see* the world through the child's eyes and

[24] Massachusetts Committee For Public Counsel Services, *Performance Standards Governing The Representation Of Children And Parents in Child Welfare Cases*, Chapter Four: Performance Standards and Complaint Procedures 4-1, Section 1.6(c) (2004).
[25] Candice L. Maze, JD, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, ABA Center on Children and the Law, October, 2010.
[26] *Id.*

formulate their approach from that perspective, gathering information and gaining insight into the child's experiences to inform advocacy related to placement, services, treatment and permanency.[27] The child's lawyer should be proactive and seek out opportunities to observe and interact with the very young child client. It is also essential that lawyers for very young children have a firm working knowledge of child development and special entitlements for children under age five.[28]

When determining a substituted judgment position, the lawyer shall take into consideration the child's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case and the use of the least restrictive or detrimental alternatives available. The child's lawyer should seek to speed the legal process, while also maintaining the child's critical relationships.

The child's lawyer should not confuse inability to express a preference with unwillingness to express a preference. If an otherwise competent child chooses not to express a preference on a particular matter, the child's lawyer should determine if the child wishes the lawyer to take no position in the proceeding, or if the child wishes the lawyer or someone else to make the decision for him or her. In either case, the lawyer is bound to follow the client's direction. A child may be able to direct the lawyer with respect to a particular issue at one time but not at another. A child may be able to determine some positions in the case but not others.

(e) When the child's lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a best interest advocate or investigator to make an independent recommendation to the court with respect to the best interests of the child.

When taking protective action, the lawyer is impliedly authorized under Model Rule 1.6(a) to reveal information about the child, but only to the extent reasonably necessary to protect the child's interests.[29] Information relating to the representation of a child with diminished capacity is protected by Rule 1.6 and Rule 1.14 of the ABA Model Rules of Professional Conduct. [OR ENTER STATE RULE CITATION]

Commentary:

Consistent with Rule 1.14, ABA Model Rules of Professional Conduct (2004), the child's lawyer should determine whether the child has sufficient maturity to understand and form an attorney-client relationship and whether the child is capable of making reasoned judgments and engaging in meaningful communication. It is the responsibility of the child's lawyer to determine whether the child suffers from diminished capacity. This decision shall be made after sufficient

[27] *Id.*
[28] *Id.*
[29] M.R. 1.14(c)

contact and regular communication with the client. Determination about capacity should be grounded in insights from child development science and should focus on the child's decision-making process rather than the child's choices themselves. Lawyers should be careful not to conclude that the child suffers diminished capacity from a client's insistence upon a course of action that the lawyer considers unwise or at variance with lawyer's view.[30]

When determining the child's capacity the lawyer should elicit the child's expressed wishes in a developmentally appropriate manner. The lawyer should not expect the child to convey information in the same way as an adult client. A child's age is not determinative of diminished capacity. For example, even very young children are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.[31]

Criteria for determining diminished capacity include the child's developmental stage, cognitive ability, emotional and mental development, ability to communicate, ability to understand consequences, consistency of the child's decisions, strength of wishes and the opinions of others, including social workers, therapists, teachers, family members or a hired expert.[32] To assist in the assessment, the lawyer should ask questions in developmentally appropriate language to determine whether the child understands the nature and purpose of the proceeding and the risks and benefits of a desired position.[33] A child may have the ability to make certain decisions, but not others. A child with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the child's own well-being such as sibling visits, kinship visits and school choice and should continue to direct counsel in those areas in which he or she does have capacity. The lawyer should continue to assess the child's capacity as it may change over time.

When the lawyer determines that the child has diminished capacity, the child is at risk of substantial harm, the child cannot adequately act in his or her own interest, and the use of the lawyer's counseling role is unsuccessful, the lawyer may take protective action. Substantial harm includes physical, sexual and psychological harm. Protective action includes consultation with family members, or professionals who work with the child. Lawyers may also utilize a period of reconsideration to allow for an improvement or clarification of circumstances or to allow for an improvement in the child's capacity.[34] This rule reminds lawyers that, among other things, they should ultimately be guided by the wishes and values of the child to the extent they can be determined.[35]

"Information relating to the representation is protected by Model Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to this section, the lawyer is impliedly authorized to make necessary disclosures,

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[30] Restatement (Third) of the Law Governing Lawyers Sec. 24 c. c (2000).
[31] M.R. 1.14 cmt. 1
[32] M.R. 1.14, cmt. 1
[33] Anne Graffam Walker, Ph.D. *Handbook on Questioning Children: A Linguistic Perspective* 2nd Edition ABA Center on Children and the Law Copyright 1999 by ABA.
[34] M.R. 1.14 cmt. 5
[35] M.R. 1.14 cmt. 5

even when the client directs the lawyer to the contrary."[36] However the lawyer should make every effort to avoid disclosures if at all possible. Where disclosures are unavoidable, the lawyer must limit the disclosures as much as possible. Prior to any consultation, the lawyer should consider the impact on the client's position, and whether the individual is a party who might use the information to further his or her own interests. "At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client."[37] If any disclosure by the lawyer will have a negative impact on the client's case or the lawyer-client relationship, the lawyer must consider whether representation can continue and whether the lawyer-client relationship can be re-established. "The lawyer's position in such cases is an unavoidably difficult one."[38]

A request made for the appointment of a best interest advocate to make an independent recommendation to the court with respect to the best interests of the child should be reserved for extreme cases, i.e. where the child is at risk of substantial physical harm, cannot act in his or her own interest and all protective action remedies have been exhausted. Requesting the judge to appoint a best interest advocate may undermine the relationship the lawyer has established with the child. It also potentially compromises confidential information the child may have revealed to the lawyer. The lawyer cannot ever become the best interest advocate, in part due to confidential information that the lawyer receives in the course of representation. Nothing in this section restricts a court from independently appointing a best interest advocate when it deems the appointment appropriate.

SECTION 8. ACCESS TO CHILD AND INFORMATION RELATING TO THE CHILD.

(a) Subject to subsections (b) and (c), when the court appoints the child's lawyer, it shall issue an order, with notice to all parties, authorizing the child's lawyer to have access to:

(1) the child; and

(2) confidential information regarding the child, including the child's educational, medical, and mental health records, social services agency files, court records including court files involving allegations of abuse or neglect of the child, any delinquency records involving the child, and other information relevant to the issues in the proceeding, and reports that form the basis of any recommendation made to the court.

(b) A child's record that is privileged or confidential under law other than this [act] may be released to a child's lawyer appointed under this [act] only in accordance with that law, including any requirements in that law for notice and opportunity to object to release of records. Nothing in this act shall diminish or otherwise change the attorney-client privilege of the child, nor shall the child have any lesser rights than any other party in regard to this or any other evidentiary privilege. Information that is privileged under the

[36] M.R. 1.14, cmt. 8
[37] M.R. 1.14, cmt. 8
[38] M.R. 1.14, cmt 8

lawyer-client relationship may not be disclosed except as otherwise permitted by law of this state other than this [act].

(c) An order issued pursuant to subsection (a) shall require that a child's lawyer maintain the confidentiality of information released pursuant to Model Rule 1.6. The court may impose any other condition or limitation on an order of access which is required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding.

(d) The custodian of any record regarding the child shall provide access to the record to an individual authorized access by order issued pursuant to subsection (a).

(e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect upon issuance.[39]

SECTION 9. PARTICIPATION IN PROCEEDINGS.

(a) Each child who is the subject of an abuse and neglect proceeding has the right to attend and fully participate in all hearings related to his or her case.

(b) Each child shall receive notice from the child welfare agency worker and the child's lawyer of his or her right to attend the court hearings.

(c) If the child is not present at the hearing, the court shall determine whether the child was properly notified of his or her right to attend the hearing, whether the child wished to attend the hearing, whether the child had the means (transportation) to attend, and the reasons for the non-appearance.

(d) If the child wished to attend and was not transported to court the matter shall be continued.

(e) The child's presence shall only be excused after the lawyer for the child has consulted with the child and, with informed consent, the child has waived his or her right to attend.

(f) A child's lawyer appointed under this [act] is entitled to:

(1) receive a copy of each pleading or other record filed with the court in the proceeding;

(2) receive notice of and attend each hearing in the proceeding [and participate and receive copies of all records in any appeal that may be filed in the proceeding];

(3) receive notice of and participate in any case staffing or case management conference regarding the child in an abuse and neglect proceeding; and

(4) receive notice of any intent to change the child's placement. In the case of an emergency change, the lawyer shall receive notice as soon as possible but no later than 48 hours following the change of placement.

[39] NCCUSL Act, Sec. 15

(g) A child's lawyer appointed under this [act] may not engage in ex parte contact with the court except as authorized by the applicable rules of professional conduct, court order, or other law.

(h) Subject to court approval, a party may call any best interest advocate as a witness for the purpose of cross-examination regarding the advocate's report, even if the advocate is not listed as a witness by a party.

[(i) In a jury trial, disclosure to the jury of the contents of a best interest advocate's report is subject to this state's rules of evidence.][40]

Commentary:

Courts need to provide the child with notification of each hearing. The Court should enforce the child's right to attend and fully participate in all hearings related to his or her abuse and neglect proceeding.[41] Having the child in court emphasizes for the judge and all parties that this hearing is about the child. Factors to consider regarding the child's presence at court and participation in the proceedings include: whether the child wants to attend, the child's age, the child's developmental ability, the child's emotional maturity, the purpose of the hearing and whether the child would be severely traumatized by such attendance.

Lawyers should consider the following options in determining how to provide the most meaningful experience for the child to participate: allowing the child to be present throughout the entire hearing, presenting the child's testimony in chambers adhering to all applicable rules of evidence, arranging for the child to visit the courtroom in advance, video or teleconferencing the child into the hearing, allowing the child to be present only when the child's input is required, excluding the child during harmful testimony, and presenting the child's statements in court adhering to all applicable rules of evidence.

Courts should reasonably accommodate the child to ensure the hearing is a meaningful experience for the child. The court should consider: scheduling hearing dates and times when the child is available and least likely to disrupt the child's routine, setting specific hearing times to prevent the child from having to wait, making courtroom waiting areas child friendly, and ensuring the child will be transported to and from each hearing.

The lawyer for the child plays an important role in the child's court participation. The lawyer shall ensure that the child is properly prepared for the hearing. The lawyer should meet the child in advance to let the child know what to expect at the hearing, who will be present, what their roles are, what will be discussed, and what decisions will be made. If the child would like to address the court, the lawyer should counsel with the child on what to say and how to say it. After the hearing, the lawyer should explain the judge's ruling and allow the child to ask questions about the proceeding.

[40] NCCUSL Act, Sec. 16

[41] American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

Because of the wide range of roles assumed by best interest advocates in different jurisdictions, the question of whether a best interest advocate may be called as a witness should be left to the discretion of the court.

SECTION 10. LAWYER WORK PRODUCT AND TESTIMONY.

(a) Except as authorized by [insert reference to this state's rules of professional conduct] or court rule, a child's lawyer may not:

(1) be compelled to produce work product developed during the appointment;

(2) be required to disclose the source of information obtained as a result of the appointment;

(3) introduce into evidence any report or analysis prepared by the child's lawyer; or

(4) provide any testimony that is subject to the attorney-client privilege or any other testimony unless ordered by the court.

Commentary:

Nothing in this act shall diminish or otherwise change the lawyer-work product or attorney-client privilege protection for the child, nor shall the child have any lesser rights than any other party with respect to these protections.

If a state requires lawyers to report abuse or neglect under a mandated reporting statute, the state should list that statute under this section.

SECTION 11. CHILD'S RIGHT OF ACTION.

(a) The child's lawyer may be liable for malpractice to the same extent as a lawyer for any other client.

(b) Only the child has a right of action for money damages against the child's lawyer for inaction or action taken in the capacity of child's lawyer.

SECTION 12. FEES AND EXPENSES IN ABUSE OR NEGLECT PROCEEDINGS.

(a) In an abuse or neglect proceeding, a child's lawyer appointed pursuant to this [act] is entitled to reasonable and timely fees and expenses in an amount set by [court or state agency to be paid from (authorized public funds)].[42]

(b) To receive payment under this section, the payee shall complete and submit a written claim for payment, whether interim or final, justifying the fees and expenses

[42] N.C. Gen. Stat. Ann. § 7B-603.

charged.

(c) If after a hearing the court determines that a party whose conduct gave rise to a finding of abuse or neglect is able to defray all or part of the fees and expenses set pursuant to subsection (a), the court shall enter a judgment in favor of [the state, state agency, or political subdivision] against the party in an amount the court determines is reasonable.[43]

SECTION 13. EFFECTIVE DATE. This [act] takes effect on _____.

[43] NCCUSL Act, Sec. 19.

REPORT

> "The participation of counsel on behalf of **all** parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings." IJA/ABA, Juvenile Justice Standards, Standards Relating to Counsel for Private Parties, Std. 1.1, at 11 (1980)(emphasis added).

Courts in abuse and neglect cases dramatically shape a child's entire future in that the court decides where a child lives, with whom the child will live and whether the child's parental rights will be terminated. No other legal proceeding that pertains to children has such a major effect on their lives. While the outcome of an abuse and neglect case has drastic implications for both the parents and the children involved, only children's physical liberty is threatened. An abuse and neglect case that results in removal of the child from the home may immediately or ultimately result in the child being thrust into an array of confusing and frightening situations wherein the State moves the child from placement to placement with total strangers, puts the child in a group home, commits the child to an institution, or even locks the child up in detention for running away or otherwise violating a court order. Our notion of basic civil rights, and ABA Policy and Standards, demand that children and youth have a trained legal advocate to speak on their behalf and to protect their legal rights. There would be no question about legal representation for a child who was facing a month in juvenile detention, so why is there an issue for a child in an abuse and neglect case, where State intervention may last up to 18 years? The trauma faced by children in these proceedings has been recognized by at least one federal court which held that foster children have a constitutional right to adequate legal representation.[1]

Despite the gravity of these cases, the extent to which a child is entitled to legal representation varies not only from state to state, but from case to case, and all too often, from hearing to hearing. The root of these inconsistencies lies in the lack of a mandate for legal representation for children in abuse and neglect cases, and the lack of uniform standards for the legal representation of children, coupled with the lack of sufficient training necessary for attorneys to provide adequate representation to their child clients.

In 1996 the ABA adopted the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (hereinafter "ABA Abuse and Neglect Standards") calling for a lawyer for every child subject to abuse and neglect proceedings.[2] The ABA Abuse and Neglect standards state that "All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continue." In 2005, the ABA unanimously passed policy that

[1] Kenny A. v. Perdue, 356 F. Supp. 2d 1353 (2005).

[2] American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) at preface.

calls upon Congress, the States, and territories to ensure that "all dependent youth . . . be on equal footing with other parties in the dependency proceeding and have the right to quality legal representation, not simply an appointed lay guardian *ad litem* or lay volunteer advocate with no legal training, acting on their behalf in this court process."

The proposed *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (hereinafter "Model Act") focuses on the representation of children in abuse and neglect cases to ensure that states have a model of ethical representation for children that is consistent with the ABA Abuse and Neglect Standards,[3] ABA Policy, and the ABA Model Rules of Professional Conduct (hereinafter "ABA Model Rules").

Although many states require that a lawyer be appointed for a child in an abuse and neglect proceeding, some require that the child's lawyer be "client directed" and others require the lawyer to act as a guardian *ad litem* whereby the attorney is charged with the duty of protecting and serving the "best interests" of the child. Often there is not "careful delineation of the distinctions between the ethical responsibilities of a lawyer to the client and the professional obligations of the lay guardian *ad litem* as a best interests witness for the court."[4] The states' use of different statutory language and mandated roles for child representation has led to much confusion within the field.

The proposed Model Act conforms to the clearly stated preference in the ABA Abuse and Neglect Standards for a client-directed lawyer for each child. Similarly, the proposed Model Act is consistent with the ABA Model Rules. The Model Act states that the child's lawyer should form an attorney-client relationship which is "fundamentally indistinguishable from the attorney-client relationship in any other situation and which includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to advise."[5]

Consonant with the ABA Model Rules, the drafters of the Model Act started from the premise that all child clients have the capacity to form an attorney-client relationship. An attorney must enter into representation of a child treating the child client as he or she would any other client to every extent possible. The attorney should give the child frank advice on what he or she thinks is the best legal remedy to achieve the child's expressed wishes. This decision should not be based on the attorney's mores or personal opinions;

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[3] American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) The Standards can be found at http://www.abanet.org/leadership/2006/annual/onehundredfourteen.doc

[4] *Uniform Representation of Children in Abuse and Neglect, and Custody Proceedings Act* (hereinafter "NCCUSL Act"), National Conference of Commissioners of Uniform State Law. Prefatory Note (2007); the text of the final act can be found at http://www.law.upenn.edu/bll/archives/ulc/rarccda/2007_final.htm. *See* Atwood, *supra* note 1, at 188-91; Howard A. Davidson, *Child Protection Policy and Practice at Century's End*, 33 FAM. L. Q. 765, 768-69 (1999). For information about different state practices *see* Representing Children Worldwide 2005 (www.law.yale.edu/rcw) or *A Child's Right to Counsel. First Star's National Report Card on Legal Representation for Children* 2007.

[5] ABA Model Act, Commentary to Section 7(c) which refers to ABA Model Rules 1.2, 1.6, 1.3, 1.1, 1.7, 1.4 and 2.1.

rather it should focus on the attorney's knowledge of the situation, the law, options available and the child's wishes. The proposed Model Act also provides specific guidance for lawyers charged with representing those child clients with diminished capacity. Some children (including infants, pre-verbal children, and children who are mentally or developmentally challenged) do not have the capacity to form a lawyer-client relationship. These child clients should be considered the exception, not the rule, and the structure of representation for children as a whole should be based upon a theory of competence and capacity.

Providing children in abuse and neglect cases with a client-directed 'traditional' lawyer is consistent with the thinking of national children's law experts. A conference on the representation of children was held at Fordham Law School in 1995 entitled *Ethical Issues in the Legal Representation of Children*. The conference examined the principles set out in the then-proposed (later adopted) ABA Abuse and Neglect Standards and conferees clearly recommended that lawyers for children should act as lawyers, not as guardians *ad litem*.[6] The co-sponsors and participants at the Fordham conference included national children's law organizations and many ABA entities.[7]

Ten years later in 2006, children's law experts gathered again at a conference at the University of Nevada, Las Vegas (UNLV), to review the state of legal representation of children. Like the Fordham Conference, the UNLV participants produced a set of recommendations.[8] The UNLV Recommendations encourage lawyers to seek to empower children by helping them develop decision-making capacity. Regarding the role of the lawyer, the UNLV Recommendations strongly support client-directed representation for children capable of making considered decisions.[9] Again, the list of co-sponsors and participants included nationally respected children's law organizations and many ABA entities.[10]

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[6] *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301 (1996) (Fordham Recommendations) (attorney must follow child's expressed preferences and attempt to discern wishes in context in developmentally appropriate way if child is incapable of expressing viewpoint).

[7] Co-sponsors included the Administration for Children, Youth and Families, U.S. Department of Health and Human Services; ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility, ABA Section of Criminal Justice, Juvenile Justice Committee; ABA Section of Family Law; ABA Section of Individual Rights and Responsibilities; ABA Section of Litigation Task Force on Children; ABA Steering Committee on the Unmet Legal Needs of Children; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; National Counsel of Juvenile and Family Court Judges; Stein Center for Ethics and Public Interest Law, Fordham University School of Law.

[8] *See Recommendations of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham*, 6 NEV. L. J. 592-687 (2006) (UNLV Recommendations).

[9] As stated in the Recommendations, "[c]hildren's attorneys should take their direction from the client and should not substitute for the child's wishes the attorney's own judgment of what is best for children or for that child." *Id*. at 609.

[10] Co-sponsors of UNLV included the ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility; ABA Child Custody and Adoption Pro Bono Project; ABA Section of Family Law; ABA Section of Litigation; Home at Last, Children's Law Center of Los Angeles; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law;

Consistent with the ABA Abuse and Neglect Standards, ABA policy, and the recommendations of national children's law experts, Section 3 of this Model Act mandates that an attorney, acting in a traditional role, should be appointed for every child who is the subject of an abuse or neglect proceeding.[11] Attorneys can identify legal issues regarding their child clients, use their legal skills to ensure the protection of their clients' rights and needs, and advocate for their clients. The Model Act requires lawyers to complete a thorough and independent investigation and participate fully in all stages of the litigation. Lawyers for children, as lawyers for any client, have a role as a counselor to their clients and should assist their clients in exploring the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child, other family members, and future legal proceedings.[12]

Lawyers for children allow children to be participants in the proceedings that affect their lives and safety. Children who are represented by a lawyer often feel the process is fairer because they had a chance to participate and to be heard. Consequently, children are more likely to accept the court's decision because of their own involvement in the process.

Requiring lawyers to represent children in abuse and neglect cases is also consistent with federal law. The Child Abuse Prevention and Treatment Act (CAPTA) requires the appointment of a "guardian *ad litem*" for a child as a condition of receiving federal funds for child abuse prevention and treatment programs. Providing a child with a lawyer is consistent with the requirements of CAPTA. No state with a lawyer model has been held out of compliance with CAPTA and Health and Human Services (HHS) has issued guidance suggesting that appointing counsel for a child promotes the child's "best interest" consistent with CAPTA.[13]

The Model Act also provides lawyers guidance when representing children with diminished capacity, which includes young children. Like all children in these proceedings, young children are entitled to proceedings that fully examine and address their needs, including *inter alia* their physical, behavioral, and developmental health and well-being, their education and early-learning needs, their need for family permanency and stability, and their need to be safe from harm. The Model Act also allows states to set an age of capacity if they so choose.

The Model Act allows and welcomes "best interest advocates" in child welfare cases. A

National Council of Juvenile and Family Court Judges; National Juvenile Defender Center; Stein Center for Law and Ethics, Fordham University School of Law; Support Center for Child Advocates; and Youth Law Center.

[11] Federal law has long authorized the discretionary appointment of counsel for Indian children subject to the Indian Child Welfare Act. *See* 25 U.S.C. § 1912(b) (2000).

[12] Model Act, Commentary for Section (7)(c)(1).

[13] U.S. Department of HHS Children's Bureau, *Adoption 2002: The President's Initiative on Adoption and Permanence for Children*, Commentary to Guideline 15A

best interest advocate is defined as "an individual, not functioning or intended to function as the child's lawyer, appointed by the court to assist in determining the best interests of the child."[14] The advisor may be a court-appointed special advocate (CASA), a guardian *ad litem* or other person who has received training specific to the best interest of the child. The Act endorses and in no way restricts the widespread use of CASAs to fulfill the role of court appointed advisor.[15]

A state's law regarding abuse and neglect proceedings should be designed to provide children involved in an abuse and neglect case with a well-trained, high quality lawyer who is well-compensated and whose caseload allows for effective representation. Lawyers for children are essential for ensuring that the child's legal rights are protected. "Unless children are allowed by lawyers to set the objectives of their cases, they would not only be effectively deprived of a number of constitutional rights, they would be denied procedures that are fundamental to the rule of law."[16]

Children in dependency court proceedings are often taken from their parents, their siblings and extended families, their schools, and everything that is familiar to them. Children and youth deserve a voice when important and life-altering decisions are being made about them. They deserve to have their opinions heard, valued and considered. They have interests that are often distinct or are opposed to those of the state and their parents in dependency proceedings and, as the ABA has recognized many times, they deserve ethical legal representation.

In preparing this Model Act, the drafters have taken into consideration the enormous contributions of various organizations and advocates in defining standards of representation, most notably that of the American Bar Association (ABA), the National Association of Counsel for Children (NACC), the Uniform Law Commission (ULC), participants in the Representing Children in Families UNLV Conference, and the states themselves. In addition, drafters have sought input from the ABA Standing Committee on Ethics, various sections within the ABA, and more than 30 children's law centers

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[14] Model Act, Section 1.

[15] The Court Appointed Special Advocate is a lay volunteer who advocates as a non-lawyer on behalf of a child in child abuse and neglect proceedings. Volunteers are screened and trained at the local level, but all CASA programs that are affiliated with the National Court Appointed Special Advocate Association must comply with the standards issued by that organization. *See* www.nationalcasa.org. In addition, many states have established their own standards to ensure that the volunteers representing children are competent and possess relevant training and experience. *See generally* Michael S. Piraino, *Lay Representation of Abused and Neglected Children: Variations on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy*, 1 JOURNAL OF CENTER FOR CHILDREN AND THE COURTS 63 (1999). The Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice is authorized to enter into cooperative agreements with the National CASA Association to expand CASA programs nationally. *See* 42 U.S.C.A. § 13013 (2005 & Supp. 2006). One of the key strengths of the CASA program is that a CASA volunteer generally represents only one child at a time. Moreover, an attorney for the child working in tandem with a CASA volunteer can provide a powerful "team" approach in juvenile court. In addition, CASA volunteers may have access to the CASA program's own legal representative for legal advice.

[16] Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 Fordham L.Rev. 1399, 1423-24 (1996).

around the country who represent children every day.

Respectfully Submitted,
Hilarie Bass, Chair
Section of Litigation
August, 2011

GENERAL INFORMATION FORM

Submitting Entity: Section of Litigation

Submitted by: Hilarie Bass, Chair

1. Summary of Resolution.

The resolution proposes that the ABA adopt a *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*. The *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* focuses on the representation of children in abuse and neglect cases to ensure that states have a model of ethical representation for children that is consistent with the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (adopted by the House of Delegates in 1996), ABA Policy, and the ABA Model Rules of Professional Conduct.

2. Approval by Submitting Entity.

On April 16, 2011 the Section of Litigation Council approved this Resolution at a meeting during the Section of Litigation Annual Conference in Miami, FL.

3. Has this or a similar resolution been submitted to the House or Board previously?

The Section of Litigation submitted a previous version of the *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* to the ABA House of Delegates for the 2009 ABA Annual Meeting. The Section of Litigation withdrew the Model Act prior to the ABA Annual Meeting, in the hopes that it could work with the Family Law Section to complete an Act that both entities could approve. The Family Law Section voted to co-sponsor the Model Act at their spring conference on April 8, 2011.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The Resolution is consistent with both the ABA Standards on the Representation of Children in Abuse and Neglect Standards and the ABA Model Rules of Professional Conduct. This Resolution provides states with a legislative option to institutionalize ABA Policy.

5. What urgency exists which requires action at this meeting of the House?

States are seeking guidance in defining the proper role of lawyers assigned to represent abused or neglected children. It is important for the American Bar Association to provide guidance in the form of model legislation.

6. Status of Legislation. (If applicable).

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N/A

7. Cost to the Association. (Both direct and indirect costs.)

Adoption of the resolution will not result in expenditures.

8. Disclosure of Interest. (If applicable.)

No known conflict of interest exists.

9. Referrals.

Section of Family Law—co-sponsorship approved on April 8, 2011
Criminal Justice Section—co-sponsorship re-affirmed on April 16, 2011
Commission on Homelessness and Poverty—co-sponsorship re-affirmed on April 28, 2011
Commission on Youth at Risk—co-sponsorship approved
Steering Committee on Legal Aid and Indigent Defense (SCLAID)–co-sponsorship approved
General Practice and Solo Practitioners, co-sponsorship approved

Prior co-sponsors—updated resolution has been sent on April 26, 2011 to affirm co-sponsorship for the following entities:
New York State Bar Association
Los Angeles County Bar Association

Individual Rights & Responsibilities—co-sponsorship requested June, 2011
Young Lawyers Division, co-sponsorship requested June, 2011
Washington State Bar Association, co-sponsorship requested June, 2011
Judicial Division, will consider co-sponsorship on June 1, 2011
Commission on Immigration, co-sponsorship requested, June, 2011
Government and Public Sector Lawyers, co-sponsorship requested, June, 2011
Ethics and Professional Responsibility, co-sponsorship requested, June, 2011

10. Contact Persons. (Prior to the meeting.)

Lawrence J. Fox
Drinker Biddle LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
215-988-2714
Email: lawrence.fox@dbr.com

JoAnne A. Epps
Professor of Law and Associate Dean for Academic Affairs

Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122-6094
Phone: 215/204-8993
Email: joanne.epps@temple.edu

11. Contact Person. (Who will present the report to the House.)

JoAnne A. Epps
Professor of Law and Associate Dean for Academic Affairs
Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122-6094
Phone: 215/204-8993
Email: joanne.epps@temple.edu
Cell phone: 609-304-2881

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls upon the ABA to adopt the ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, dated August, 2011.

2. Summary of the Issue which the Resolution Addresses

The *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* focuses on the representation of children in abuse and neglect cases to ensure that states have a model of ethical representation for children that is consistent with the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (adopted by the House of Delegates in 1996), ABA Policy, and the ABA Model Rules of Professional Conduct.

Many states now require that a lawyer be appointed to a child in an abuse and neglect proceeding. The level to which children are entitled to and involved with their legal representation in court varies not only from state to state, but from case to case, and all too often, from hearing to hearing. The proposed *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (hereinafter "ABA Model Act") includes a mandate which requires that a lawyer be appointed for each child who is the subject of a petition in an abuse, neglect, dependency, termination of parental rights or post termination of parental rights proceeding and that, consistent with the ABA Model Rules, the child's lawyer should form an attorney-client relationship which is fundamentally indistinguishable from the attorney-client relationship in any other situation. This attorney-client relationship would include the duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to advise.

3. Please Explain How the Proposed Policy Position Will Address the Issue

These standards will seek to establish standards of required ethical conduct so that lawyers and judges will have a common understanding of what is expected from lawyers for children in abuse and neglect cases. The Model Act provides states with a legislative framework for providing lawyers for children and will ensure consistency within the state and from state to state.

4. Summary of Minority Views or Opposition

None of which we are aware.

0510.0 Nevada Safety Assessment

0510.1 Policy Approval Clearance Record

☑ Collaborative Policy	This policy supersedes: 225 Safety Assessment	Number of pages in Policy: 14 Date Policy Effective: 12/13/07
PART Review & Approval	_____/_____/_____	Policy Leads: Caroline Thomas MSW LSW and Marjorie Walker MSW, LSW
DMG Approval	07/17/07 and 07/19/07	Policy Lead: Betsey Crumrine LCSW
Reformat Revisions	9/24/07	Policy Lead: Betsey Crumrine LCSW
Approved Revisions	09/18/08	Policy Lead: Betsey Crumrine LCSW
DMG Approved Revisions	_____/_____/_____	Policy Lead: _____
DCFS Administrator Approval:		Signature: On File
Review from Representative from the Office of the Attorney General:	_____/_____/_____	Signature:

0510.2 Statement of Purpose

0510.2.1 **Policy Statement:** A safety assessment is the systematic collection of information about threatening family conditions and current, significant, and clearly observable threats to the safety of a child(ren).

0510.2.2 **Purpose:** The purpose of assessing *safety*:

- Determination whether a child(ren) are likely to be in immediate or imminent danger of serious physical or other type of harm that may require a protective intervention; and
- The purpose of developing a *safety plan* is:
  - To insure the immediate protection of a child while safety threats are being addressed.

0510.3 Authority

Adoptions and Safe Families ACT 1997, D.L. 105-89
NRS 432B.180, .190, .260, .330, .340
NAC 432B.150, .155, .160, .185, .260, .310

0510.4 Definitions

0510.4.1 **Caregiver Protective Capacities:** A parent's or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or prevent risk influences from creating a safety threat. Protective capacities may be grouped into three different categories that include: cognitive, emotional and behavioral (personal and parenting).

Cognitive protective capacity refers to the parent's ability to recognize hazardous conditions in a child's physical environment or recognize others who may present a threat to a child. Another cognitive capacity is the ability of the caregiver to defer his/her own needs in favor of the child's. It is specific intellect, knowledge, understanding and perception that results in parenting and protective vigilance.

Behavioral protective capacity can include meeting the basic needs of the child and protecting the child from others as needed for child safety. Physical protection might

mean the ability to physically isolate the child or to mediate conflicts that could escalate into harmful situations. In addition, the caregiver must address forms of personal behavior or conditions that may contribute to the child being unsafe, such as: alcohol and drug abuse, selection of dangerous partners, and mental health issues. It is specific action, activity, performance that is consistent with and results in parenting and protective vigilance.

Emotional protective capacity refers to the attachment or emotional bond between a child and their parent or caregiver. Attachment constitutes an emotional bond that provides motivation to protect and nurture a child. Consider how the attachment does or does not contribute to the increased safety of the child and the potential impact of disrupted attachment. It is specific feelings, attitudes, identification with a child and motivation that results in parenting and protective vigilance.

0510.4.2 **Child Maltreatment:** Encompasses physical abuse, sexual abuse, emotional abuse and neglect. Child maltreatment occurs as a result of parenting behavior harmful or destructive to a child's cognitive, emotional, social, or physical development.

0510.4.3 **Child Welfare Services (CWS):** As defined by NRS 432B.044, includes, without limitation: 1) Protective services, investigations of abuse or neglect and assessments; 2) Foster care services, as defined in NRS 432.010; and 3). Services related to adoption.

0510.4.4 **Impending Danger:** A family situation or household member's behavior that is determined to be out-of-control and will likely result in serious harm to a child. [This was previously known as "foreseeable danger"].

0510.4.5 **Information Collection Standard:** Refers to the six critical areas that are used for assessing and analyzing family strengths, risk of maltreatment and child safety. This are: 1) surrounding circumstances accompanying the maltreatment; 2) child functioning on a daily basis; 3) adult functioning with respect to daily life management and general adaptation (including mental health functioning and substance usage); 4) disciplinary approaches used by the parent; 5) the overall, typical, pervasive parenting practices; and 6) the extent of maltreatment.

0510.4.6 **Nevada Initial Assessment (NIA):** The information gathering process necessary to identify family safety, strengths, and risk of maltreatment.

0510.4.7 **Nevada Initial Assessment Summary:** The consolidation of the information collected related to the six areas of functioning.

0510.4.8 **Observable:** Dangerous, real, can be seen, can be reported, and is evidenced in explicit unambiguous ways.

0510.4.9 **Observable and Specific:** A family condition is observable when it can be clearly described and articulated.

0510.4.10 **Out of Control:** A behavior or condition may be defined as out of control if credible information suggest that a caregiver or a child's family system lacks the internal inhibitions to prevent actions that pose a threat of serious harm to a child or otherwise knowingly chooses to engage in behavior that poses a threat of serious harm to a child. Examples of a behavior or condition that may be deemed to be out of control include, but are not limited to: a physiological, neurological or psychological condition (e.g. an addiction, mental illness, mental retardation, or domestic violence); or a strong belief

system that to the caregiver justifies an action (e.g. belief that harsh and dangerous physical punishment is necessary or justifiable).

0510.4.11 **Present Danger:** An immediate, significant, and clearly observable family condition that is actively occurring or "in process" of occurring at the point of contact with a family; and will likely result in serious harm to a child.

0510.4.12 **Re-certification of Initial Safety Assessment:** Occurs when the original safety decision at the point of initial contact was "safe" and no subsequent safety threats were identified at the conclusion of the investigation. The caseworker re-certifies that there is no change in the original safety assessment by signing and dating the Nevada Safety Assessment. It is then submitted to the supervisor for review and approval. Note: If during the investigation new safety threats are identified, re-certification is not appropriate and a new safety assessment must be completed.

0510.4.13 **Re-assessment of Safety:** Means that a new safety assessment is completed for all children in the family (NAC 432B.185) at all required milestones.

0510.4.14 **Risk Assessment:** The Risk Assessment (based on the Children's Resource Center and California Structured Decision Making Model) identifies families, which have low, moderate, high, or very high probabilities of future abuse or neglect. This assessment does not predict recurrence, but assists the caseworker in assessing whether a family is more or less likely to have another incident without intervention.

0510.4.15 **Risk of Maltreatment:** The likelihood of future maltreatment based on the current condition of the family. Risk indicates conditions and/or circumstances in a family that contribute to the likelihood of occurrence or re-occurrence of maltreatment.

0510.4.16 **Safe Child:** A child may be considered safe when there are no present or impending threats of serious harm or there are sufficient caregiver protective capacities to prevent harm.

0510.4.17 **Safety Assessment:** The process for evaluating family functioning to determine if there are negative family conditions that are out-of-control and therefore pose an imminent safety threat (present or impending danger) to a child.

0510.4.18 **Safety Assessment Conclusion:** The conclusion that a child is safe or unsafe based upon the assessment of safety threats, and evaluation of child vulnerability and caregiver protective capacities.

0510.4.19 **Safety Intervention:** The action taken to respond to and manage threats to child safety.

0510.4.20 **Safety Plan:** A time limited, written plan that is put into place upon contact with the family when present and/or impending danger is manifested to ensure immediate protection of a child. The safety plan must be sufficient to manage and control safety threats, based on a high degree of confidence that it can be implemented and sustained.

0510.4.21 **Safety Threshold for Danger**: The point at which a threat of harm suggests that a child is in imminent danger of serious harm. While risk of maltreatment considers harm on a continuum from mild to severe, safety threats (present and impending danger) are associated with maltreatment and actual or potential threat of serious harm to a child. Concern for child safety occurs when negative family circumstances and/or family member behaviors, emotions, perceptions, motives, etc., become intense and extreme to such a degree, that they cross over a threshold and cease being merely a risk influence,

and become a safety threat. The safety threshold for danger is what differentiates a negative family condition from being a safety factor verses a risk factor. Family behaviors and conditions cross the threshold of safety when they meet the following criteria:

1. **Out-of-control** (*see definition*);
2. **Severe:** Severity is fundamental to the definition of safety and refers to the effects of maltreatment that has already occurred (present danger) and/or the prudent judgment regarding the likelihood of severe effects of maltreatment based on the vulnerability of a child and the threat of danger that exists in a family (impending).
3. **Imminent:** In the context of safety intervention, imminence refers to threats to child safety that are likely to become active. There is a degree of certainly that the negative condition(s) that threaten child safety will emerge or re-emerge.
4. **Observable and Specific** behaviors and/or observable conditions in the family that clearly justify a safety concern.

0510.4.22 **Serious Harm:** Includes the threat or evidence of serious physical injury, sexual abuse, significant pain or mental suffering, extreme fear or terror, extreme impairment or disability; death, substantial impairment or risk of substantial impairment to the child's mental or physical health or development.

0510.4.23 **State:** The Family Programs Office (FPO) at the Division of Child and Family Services (DCFS).

0510.4.24 **Unsafe or Not Safe Child:** A child is considered unsafe when present or impending danger threats exist and cannot be managed by the caregiver/family's protective capacities.

0510.4.25 **Vulnerable Child:** A child who is unable to protect him/herself and dependent on others for protection.

0510.5 Procedures

0510.5.1 **Safety Assessment:** The Nevada Safety Assessment is to be completed to assess and analyze child safety for all children in their home of origin and while in an out-of-home placement. The Safety Assessment Guidelines are used to clarify the 12 indicators of present and impending danger on the Safety Assessment form.

The Safety Assessment form has seven components: Milestones; Assessment; Child Vulnerability; Caretaker Protective Capacities; Conclusion; Safety Intervention Analysis and Safety Plan. Each component contains best-practice standards related to child safety assessment.

A. Milestones: Safety is assessed at the following milestones on all children in the home: (NAC 432B.185)

1) The initial intake performed by assessing a priority level to the report of harm (see Intake Policy).
2) The initial face-to-face contact with the alleged child victim must be documented within 24 hours of contact with the child, excluding weekends and Holidays. However,

if circumstances do not allow for contact with caregiver(s) and all other children in the home prior to the completion of that safety assessment, another safety assessment must be completed within 48 hours of contact with caregiver(s) and remaining children in the home. If the safety assessment is completed on hard copy, the assessment must be documented in UNITY within 5 days, per 0601 Documentation Policy.

3) Re-certify or complete a safety assessment at the conclusion of Nevada Initial Assessment

4) Any time the agency is considering removal of the child from the custody of his/her parents;

5) Before any unsupervised visitations between the child and his/her parents;

6) Before returning the child to the custody of his/her parents;

7) Any time a significant event or change occurs that affects the household of a parent of the child or a foster parent or other provider of substitute care for the child, including, without limitation, a birth, marriage, death or major illness;

8) Before each court review.

9) Any time, as determined by the agency, there is an indication that the safety of the child may be jeopardized; whenever evidence or circumstances suggest that a child's safety may be in jeopardy.

10) After reunification with the family of the child (30 days after reunification, if the case remains open) and

11) Prior to supervisory approval for closure of a case for the provision of child welfare services to a child.

B. Safety Assessment: The Safety Assessment consists of 12 standardized indicators of present and impending danger (threat of serious harm) that are used to analyze the information related to the six assessment areas. When assessing the 12 safety threats, the caseworker must consider how specific case information relates to the following four safety threshold criteria (see Safety Assessment Guidelines):

1. Out-of-control
2. Severe (serious harm)
3. Imminent
4. Observable and specific

C. Child Vulnerability: A vulnerable child is one who is unable to protect him/herself and is dependent on others for protection. This determination is made in Part C of the Safety Assessment Form and requires justification for why a child is not considered vulnerable to each indicated safety threat.

D. Caregiver Protective Capacities: Part D of the Safety Assessment form collects information regarding a parent or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or prevent risk influences from creating a safety threat. The assessment of protective capacities of a caregiver includes the consideration of behavioral, cognitive and emotional characteristics such as intellectual skills, motivations to protect, positive attachments and social connections.

The worker will indicate whether a caregiver residing in the home can and will protect a vulnerable child from present and/or impending danger and then will justify this decision by describing the protective capacities present. For example, "Caregiver believes child and has filed a temporary protection order against alleged perpetrator who has subsequently moved out of the home. Caregiver has reported any attempts to contact the alleged victim to police and child welfare agency".

E. Safety Assessment Conclusion: The safety assessment conclusion is a critical determination based on an evaluation of each of the 12 standardized safety threats. A child is considered to be safe if there are no safety threats present, OR, if there are safety threats present AND there are sufficient caregiver protective capacities to assure that safety threats are controlled. A child is not safe if there are safety threats present and caregiver protective capacities are insufficient to assure that safety threats are controlled.

F. Safety Intervention Analysis: This is a focused examination of four areas that assist in the development of a sufficient safety plan. Whenever it is determined that a child is not safe, it is necessary to consider what safety plan will be most appropriate and least intrusive. Safety intervention analysis follows the decision that a child is not safe. Safety intervention analysis is the process of further engaging a family in the safety planning process to promote family self-determination. The results of safety intervention analysis, which includes the development of a safety plan, should not be implemented without supervisory consultation. The family, caseworker and supervisor should consider how safety threats are manifested in the family and the time of day when safety threats are active. This will assist in determining the type of safety plan that is required and the level of effort needed to control existing safety threats.

To determine if an in-home CPS managed safety plan is an appropriate response for a particular family it is necessary to consider the following four questions listed in Part F of the Safety Assessment:

1. Caregiver(s) is/are residing in the home where the child will live?
2. The home environment is stable or calm enough for safety actions or tasks to be provided and for people participating in safety management to be in the home safely without disruption?
3. Caregiver(s) is/are willing for safety actions or tasks to be provided and will cooperate with those participating in the initial protective plan or continuing safety plan?
4. Are there sufficient resources within the family or community to perform the safety actions, tasks, or services necessary to manage the identified safety threats?

If the answer to any of the above questions is "NO," safety management must involve out-of-home placement. Explain all "no" responses.

G. Safety Assessment Form Documentation Requirements:

The caseworker must complete eleven required screens in the UNITY system that are associated with the Safety Assessment. See section 510.6.4B. for UNITY documentation screens.

0510.5.2 Safety Planning: Safety plans are intended to be temporary interventions and should only be instituted when a determination has been made that children are unsafe. The safety plan must be completed and signed by the caregiver(s) prior to the worker leaving the identified child(ren) with the caregiver after a safety threat has been identified. If a

safety plan is in place, the provisions of the plan must continue to sufficiently control present or impending danger or the plan must be adjusted. If the child is placed out of the home, reasonable efforts must be made to return the child to the home of origin as soon as possible. Cases should never be closed when an active safety plan is in place.

The purpose of a safety plan is to control and manage present (impending) danger and/or safety threats. The use of an in-home safety plan or placement is intended to substitute for diminished or absent caregiver protective capacities by controlling and managing identified safety threats until such time as the caregiver is able to assure child safety. Safety plans recognize and use caregiver's strengths and abilities to manage existing safety threats, prevent additional safety threats from arising, or prevent risk influences from becoming safety threats. These safety plans are very short term, to allow time to complete the NIA and assess for impending danger.

A. Safety Plan Intervention: Safety planning is designed along a continuum from the least to most intrusive intervention to assure child safety. A family's ability to sufficiently manage safety on its own is the least intrusive response for controlling identified safety threats. If caregiver protective capacities cannot independently control safety threats, then consideration should be given to the use of an in-home safety plan (see safety plan analysis). If it is determined that an in-home safety plan is not feasible or appropriate, then out-of-home placement must be pursued. In cases where children are legally removed from the home, documentation of a safety plan is not required. However, a case plan must still be completed within the timeframe required by the 0204 Case Planning Policy.

Consider the following questions when determining safety plan sufficiency:

1) If a safety plan is in place, can the child continue to remain in the home with the use of an in-home safety plan?

2) If a child has been removed, can reunification occur with the implementation of an in-home safety plan?

3) If a safety plan is in place, will the provisions of the plan continue to sufficiently control present and/or impending danger? What adjustment(s) to the plan is needed to sufficiently control present and/or impending danger?

4) If there has been no previous safety plan or placement prior to the completion of the NIA, what safety plan seems indicated to sufficiently control present and/or impending danger?

If it is determined that there is no present and/or impending danger and a child is safe, a safety plan or placement is not required. A comparison of the content of the safety plan verses a case plan is as follows:

Safety Planning	**Case Planning**
Purpose: Control and Manage Safety Threats - (present and/or impending danger)	Purpose: Change the Conditions Associated with Safety Threats
Child Welfare Responsibility: Oversight of Child Safety	Child Welfare Responsibility: Facilitation of Services and Monitoring Progress
Safety Providers: Informal and Formal	Service Providers: Formal and Informal
Effect: Immediate Action	**Effect: Long Term Outcomes**

B. Safety Plan Criteria: To be effective, all safety plans must meet the following criteria:

1) Action oriented;
2) Safety response(s) must be readily accessible and available at the level required to assure safety;
3) Safety response(s) must have an immediate impact on controlling safety threats;
4) Intervention should be the least intrusive response for assuring safety;
5) Describe the frequency of the activity to address child safety;
6) Do not include promissory commitments (e.g., "I will not hit my child.")
7) Identify each person participating in specific activities;
8) Identify a Safety Provider;
9) Delineate timeframes for each activity and the plan; and
10) Describe agency activities to oversee the plan, to include changes in the caseworker contact requirement and safety plan monitoring responsibilities during the timeframe the safety plan is in place.

C. Safety Plan Provider(s): To qualify as a safety provider a person must be:

1) Fully aware of and acknowledge the safety concerns and agree to their role in monitoring safety concerns while working (being) in the home with the family.
2) Demonstrating a responsible attitude and/or have a background that demonstrates responsible actions;
3) Available, accessible, and agreeable to participation;
4) Trustworthy, committed, and properly aligned to the safety/case plan outcomes;
5) Prepared, skilled, and competent to perform the safety activity;
6) Able to perform the activities outlined in the safety plan; able to provide an appropriate physical environment for the child(ren); and
7) Must be able to protect the child(ren) from danger.

Any person, including a relative, friend, volunteer, paraprofessional, or professional may be a safety provider as long as the above qualifications are met.

In all communities consideration should also be given to the concept of:

Family Network/Environmental protective capacity refers to the visibility of a child within the community and the existence of other care giving and concerned adults who represent positive attributes and potential sources of protective capacities. The viability of these other adults often depend on their degree of access to the child and their capacity for immediate intervention, should a safety threat arise.

D. Documentation Requirements for Safety Plan: The caseworker must develop a Safety Plan with the caregiver(s) immediately upon determining that a child is unsafe, if the child(ren) is going to remain in the home while the safety threat is being addressed. The caregiver(s) must sign the Safety Plan prior to the worker leaving the child(ren) with the caregiver after an unsafe child has been identified. If a parent refuses to sign the safety plan, caseworker must consult with supervisor immediately as another plan for

safety will need to be made. If it is determined that an in-home safety plan is not feasible or appropriate, then out-of-home placement must be pursued.

A copy of the safety plan (signed by the caregiver and supervisor) must be attached to the case record. This document must become part of the case record within 24 hours of the plan being developed with the family (refer to FPO 0510C Safety Plan form).

E. Managing Safety Plans: During development of the safety plan, caseworkers must address how they will monitor the plan. Upon completion of the safety plan a case staffing between caseworker and supervisor must occur within 24 hours of instituting the plan to determine if the level of caseworker contact is adequate or additional caseworker visits are necessary during the institution of the safety plan. Weekly contact with safety plan providers is recommended.

Once a safety plan is established, it becomes a primary responsibility of the CPS caseworker to assertively supervise the safety response plan and monitor child safety. Continued safety management involves remaining well informed about the status of the safety plan. At the inception of the initial safety plan a date to review the safety plan will be agreed upon and noted on the safety plan form. Prior to the safety plan review, a caseworker and supervisor staffing must occur.

The safety plan review includes a face-to-face contact with the child, caregivers, and with out-of-home care providers (if involved). The review includes a personal contact with all other safety plan participants who are responsible for protecting the child. The review verifies that all parties remain informed, active and committed. The review concludes whether the safety plan is effectively managing safety threats and if less intrusive methods are possible and feasible.

Caseworker documentation needs to reflect that safety threats are addressed at each contact until safety threat is mitigated and safety plan is no longer needed.

F. Ongoing Safety Monitoring: Safety assessment, analysis and planning must occur throughout ongoing Child Welfare involvement with a family.

- Specific ongoing Child Welfare case milestones requiring a safety assessment are delineated in NAC 432B.185, however every encounter with a family during ongoing Child Welfare should consider threats to child safety.
- When a family transfers to ongoing Child Welfare, immediate preparation should occur in order to assume continued safety management responsibilities. Upon transfer, Child Welfare staff must have a clear understanding of how safety threats are manifested in the family and the sufficiency of the safety plan should be re-evaluated at that time.
- As a case proceeds through the ongoing Child Welfare process, safety intervention should be approached as an active and dynamic process. Ongoing Child Welfare staff must remain vigilant in managing safety responses required to assure child safety.

0510.5.3 Timelines:

Table 0510.1: Timelines for Nevada Safety Assessment Policy

Requirement	Deadline	Starting Date	Responsible Party	Actions to be Taken
Initial contact safety assessment Safety Assessments are located in UNITY windows, see Table 0510.3	Must be documented within 24 hours of contact with the child, excluding weekends and Holidays. However, if circumstances do not allow for contact with caregiver(s) and all other children in the home prior to the completion of that safety assessment, another safety assessment must be completed within 48 hours of contact with caregiver(s) and remaining children in the home. If the safety assessment is completed on hard copy, the assessment must be documented in UNITY within 5 days, per Documentation Policy.	At initial face-to-face- contact with child.	CPS caseworker	Vary depending on safety status
Recertification of initial face- to-face safety assessment	The initial safety assessment can be re-certified if the original safety decision at the initial point of contact was “safe” and no subsequent safety threats were identified at the conclusion of the investigation.	At the conclusion of investigation.	CPS caseworker	Investigation concluded.
Safety Assessment at Milestones, see 0510.5.1 A. Milestones	If done on hard copy must be documented in UNITY within 5 days, as outlined in the documentation policy.	Varies depending on milestone	CPS or CWS caseworker	Vary depending on family situation
Safety Plan Must be documented on form, FPO 0510C	Must be developed immediately upon identifying a child is “unsafe” if that child is going to remain in the home while a safety threat (s) is being addressed. Upon completion of the safety plan a case staffing between supervisor and caseworker must occur within 24 hours of instituting a safety plan. The safety plan must become a part of the case record within 24 hours of being developed.	Date safety plan initiated	CPS or CWS caseworker	Vary depending on family situation
Safety Plan Review	Prior to the safety plan review, a caseworker and supervisor staffing must occur.	At the inception of the initial safety plan a date to review the safety plan will be agreed upon and noted on the safety plan form.	CPS or CWS caseworker	The safety plan review includes a face to face contact with the child, caregivers, and with out-of-home care providers (if involved). The review includes a personal contact with all other safety plan participants The review verifies that all parties remain informed, active and committed.

0510.5.4 Forms:

A. FPO 0510A The Nevada Safety Assessment: There are eleven required UNITY screens that must be filled out in order to complete a safety assessment in UNITY. A paper copy of the safety assessment is provided as attachment 0510.9.1 for information purposes only.

B. FPO 0510B Nevada Safety Assessment Field Guide: The guide contains sections B, C, D, E and F of the Nevada Safety Assessment Form. It is provided to workers as a reference to the UNITY safety assessment when they are in the field.

C. FPO 0510C Nevada Safety Plan:

1) **Purpose:** The purpose of a safety plan is to control and manage present / impending danger and/or safety threats. This form shall be used for in-home safety management actions or tasks. A safety plan must be developed with the child's caregiver(s) immediately upon determining a child is unsafe, if the child (ren) is going to remain in the home while the safety threat(s) is being addressed.

2) **Safety Plan Instructions:** Fill out the Safety Plan in conjunction with the child's caregiver(s) and safety plan providers. Write legibly and in terms caregiver(s) can understand. For each identified safety threat, every cell within that row must be filled in. If a parent refuses to sign the safety plan, make a notation of their response somewhere on the plan and consult with a supervisor immediately as another plan for safety will need to be made. If it is determined that an in-home safety plan is not feasible or appropriate, then out-of-home placement must be pursued. A copy of the safety plan (signed by the caregiver and supervisor) must be attached to the case record within 24 hours of the plan being developed with the family.

- **Case Name:** This is the name of the name of the primary caregiver.
- **Case Number:** This is the UNITY Case Number.
- **List identified safety threats to specified child and child's age:** Write the number of the corresponding safety threat (Part B Safety Assessment) and a brief description. If a specific safety threat only pertains to one child out of many, identify child each threat pertains to.
- **Example**, "# 3, Serious injury has occurred, Sara age 4." OR If an identified threat pertains to all children in the home,
- **Example**, "#5, Caregiver unable to meet children's immediate needs for protection, children ages 2, 4, and 6."
- **Describe safety action or task selected to control the safety threat:** Safety actions or tasks must convincingly demonstrate high confidence to effectively managing safety threats.
- **Who will complete the task and where will it occur?** Example, "Marie Brown, AA sponsor and Sally Dye, paternal grandmother." "In the home."
- **Describe method for monitoring safety action or task.** "CPS caseworker will make weekly unannounced visits to the home and weekly calls to safety providers. Safety Providers will call CPS immediately with any concerns."
- **Describe how the safety provider is confirmed suitable to participate in the identified safety plan.** Worker should document the reasons he/she deems each safety provider responsible to perform actions or tasks.

- **Examples** include, “Safety provider is well informed ; trustworthy; accessible and available, mentally, emotionally and physically able, properly prepared or aligned with CPS, sufficiently experienced, reliable and dependable, accepting of his/her safety management responsibilities, fully accepting of the need for safety management and committed to participate with CPS in accordance with the established safety plan”.

0510.6 Jurisdictional Action

0510.6.1 **Development of Internal Policies:** Jurisdictions are expected to follow the policy as written.

0510.6.2 **Timelines:** None

0510.6.3 **Tools & Forms:** All three jurisdictions will use the forms included with this policy.

0510.6.4 **Documentation:**

A. Case File Documentation (paper):

Table 0510.2: Case file documentation for NV Safety Assessment Policy

File Location	Data Required
Safety Plans and Safety Plan Review forms will be maintained in the case file.	Jurisdictions must identify and communicate to DCFS Central Office FPO policy lead the exact location in the case file where these two forms can be found within 60 days of distribution of this policy.

B. UNITY Documentation (electronic):

Table 0510.3: UNITY Documentation for NV Safety Assessment Policy

Applicable UNITY Screen	Data Required
CFS056	Case Directory
CFS041	Safety Assessment History
CFS042	Safety Assessment Approval
CFS038	Safety Intervention Analysis/Safety Response Explain: Note(CFS242), if Unsafe

0510.6.5 Supervisory Responsibility:

Supervisors have the responsibility for consulting, analyzing, providing oversight and making appropriate recommendations for safety assessments and safety plans. Supervisory consultation should occur at the following points:

1. Safety Assessments which indicate a child is "unsafe" should immediately be routed to a supervisor and reviewed by the supervisor within 24 hours of submission.
2. Safety Assessments which indicate a child is "safe" should be reviewed by a supervisor within 72 hours of submission.
3. Initial Safety Plans must be reviewed and approved by a supervisor within 24 hours of implementation.
4. Continuing safety plans must be reviewed by a supervisor biweekly and/or prior to the safety plan review date indicated on safety plan.

0510.7 State Responsibilities

0510.7.1 Participants in Policy Development

A. FPO Staff: Investigative/ Front End

B. Jurisdictional Representatives: CPS Supervisors, Managers, Administrators

C. Stakeholders: None

0510.7.2 Technical Assistance

A. Requesting Technical Assistance: ACTION for Child Protection Inc.

B. Relaying TA Information: ACTION for Child Protection Inc.

C. Evidenced Based Practice: ACTION For Child Protection Inc.

0510.7.3 Clearance Process

A. Approved by DMG on 7/17/07, revisions approved on 7/19/07.

0510.7.4 State Oversight

A. QI Reviews will occur in all three jurisdictions to assure safety assessments are being completed at necessary milestones and documented in accordance with timeframes established in this policy.

B. Targeted QI reviews will occur to ensure that the kind of safety actions and/or tasks used to form a safety plan correspond in complexity with exactly what it will take to control identified safety threats.

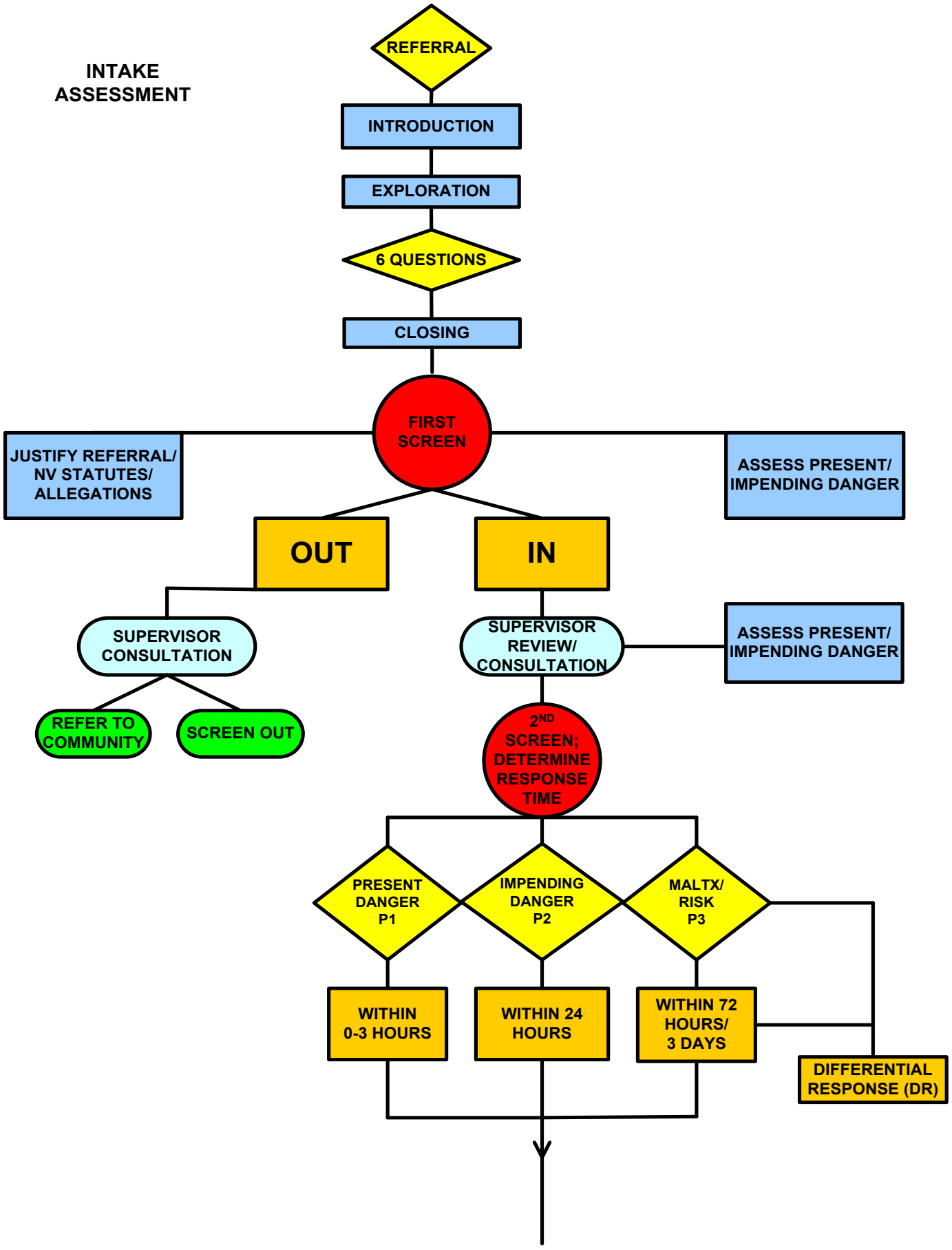
0510.8 Policy Cross Reference

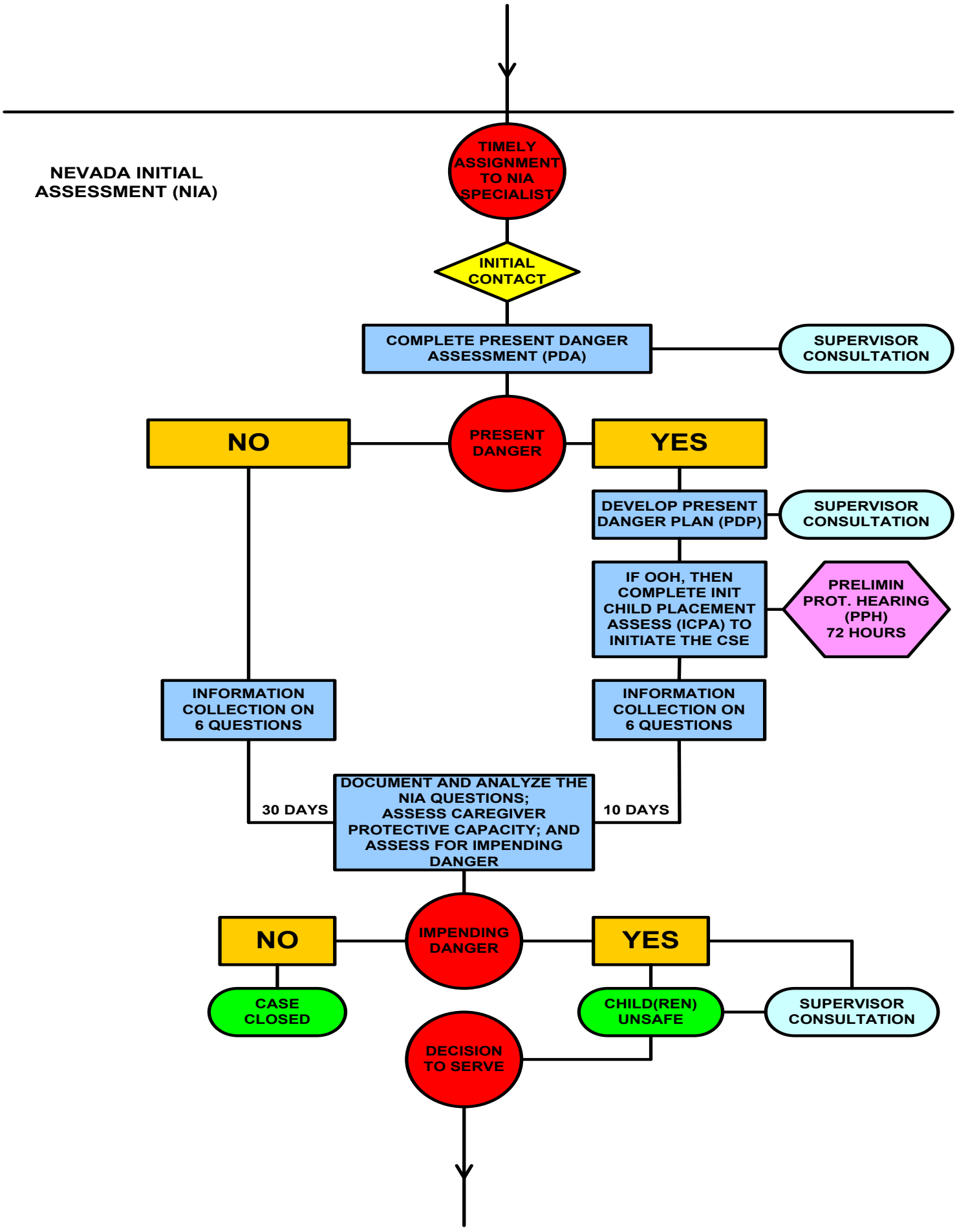
0503 Differential Response
0506 Intake
0509 Nevada Initial Assessment
0511 Risk Assessment
0601 Documentation

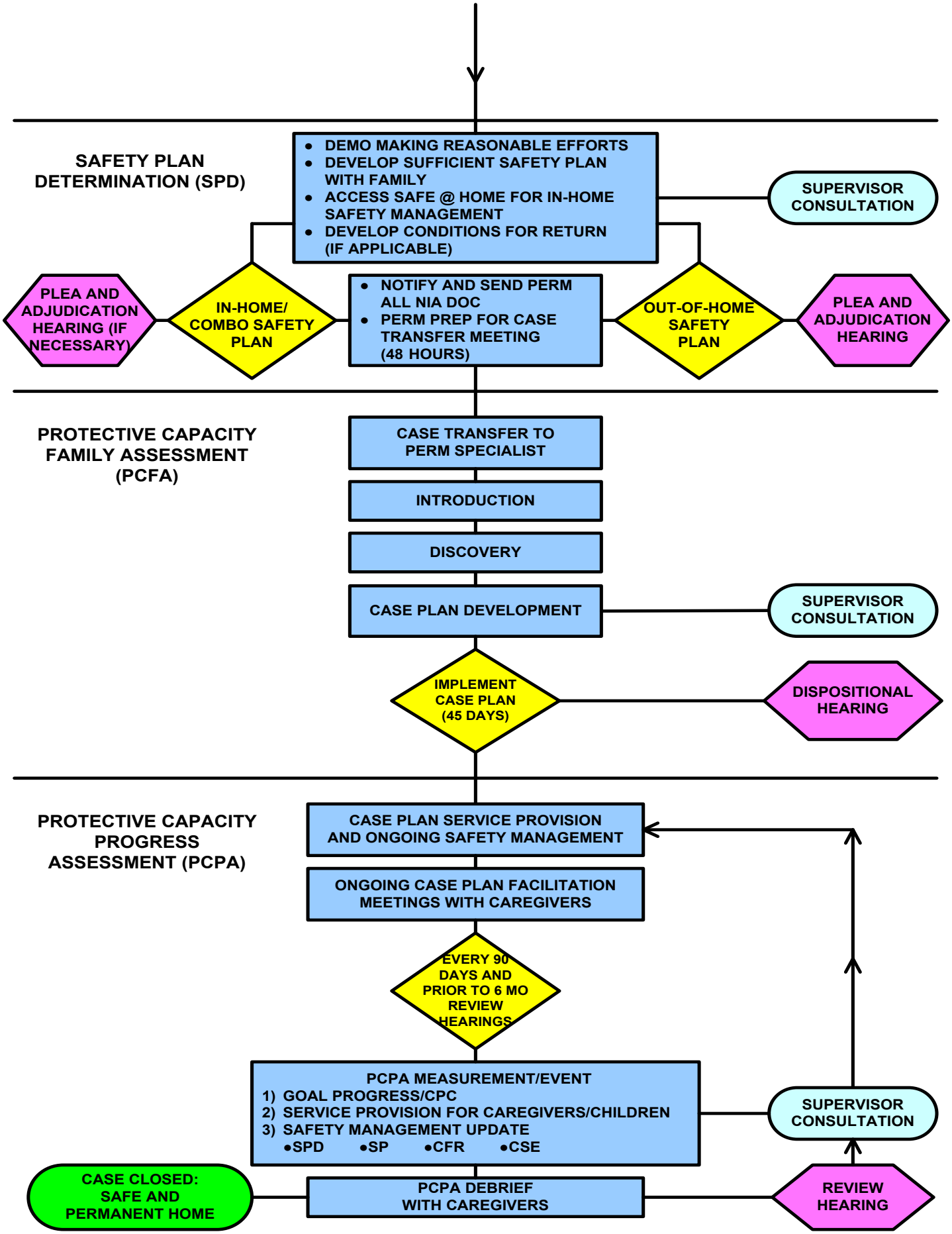
0510.9 Attachments

0510.9.1	FPO 0510A	Nevada Safety Assessment, a UNITY document
0510.9.2	FPO 0510B	Nevada Safety Assessment Field Guide, UNITY document
0510.9.3	FPO 0510C	Nevada Safety Plan
0510.9.4	FPO 0510D	Safety Plan Review
0510.9.5	FPO 0510E	Nevada Safety Threats Guide
0510.9.6	FPO 0509C	NIA, Safety and Risk Assessment Table

SAFETY INTERVENTION AND PERMANENCY SYSTEM (SIPS)




NEVADA INITIAL ASSESSMENT (NIA)
TIMELY ASSIGNMENT TO NIA SPECIALIST
INITIAL CONTACT
COMPLETE PRESENT DANGER ASSESSMENT (PDA)
SUPERVISOR CONSULTATION
NO
PRESENT DANGER
YES
DEVELOP PRESENT DANGER PLAN (PDP)
SUPERVISOR CONSULTATION
IF OOH, THEN COMPLETE INIT CHILD PLACEMENT ASSESS (ICPA) TO INITIATE THE CSE
PRELIMIN PROT. HEARING (PPH) 72 HOURS
INFORMATION COLLECTION ON 6 QUESTIONS
INFORMATION COLLECTION ON 6 QUESTIONS
30 DAYS
DOCUMENT AND ANALYZE THE NIA QUESTIONS; ASSESS CAREGIVER PROTECTIVE CAPACITY; AND ASSESS FOR IMPENDING DANGER
10 DAYS
NO
IMPENDING DANGER
YES
CASE CLOSED
CHILD(REN) UNSAFE
SUPERVISOR CONSULTATION
DECISION TO SERVE


SAFETY PLAN DETERMINATION (SPD)
DEMO MAKING REASONABLE EFFORTS
DEVELOP SUFFICIENT SAFETY PLAN WITH FAMILY
ACCESS SAFE @ HOME FOR IN-HOME SAFETY MANAGEMENT
DEVELOP CONDITIONS FOR RETURN (IF APPLICABLE)
SUPERVISOR CONSULTATION
PLEA AND ADJUDICATION HEARING (IF NECESSARY)
IN-HOME/ COMBO SAFETY PLAN
NOTIFY AND SEND PERM ALL NIA DOC
PERM PREP FOR CASE TRANSFER MEETING (48 HOURS)
OUT-OF-HOME SAFETY PLAN
PLEA AND ADJUDICATION HEARING
PROTECTIVE CAPACITY FAMILY ASSESSMENT (PCFA)
CASE TRANSFER TO PERM SPECIALIST
INTRODUCTION
DISCOVERY
CASE PLAN DEVELOPMENT
SUPERVISOR CONSULTATION
IMPLEMENT CASE PLAN (45 DAYS)
DISPOSITIONAL HEARING
PROTECTIVE CAPACITY PROGRESS ASSESSMENT (PCPA)
CASE PLAN SERVICE PROVISION AND ONGOING SAFETY MANAGEMENT
ONGOING CASE PLAN FACILITATION MEETINGS WITH CAREGIVERS
EVERY 90 DAYS AND PRIOR TO 6 MO REVIEW HEARINGS
PCPA MEASUREMENT/EVENT
1) GOAL PROGRESS/CPC
2) SERVICE PROVISION FOR CAREGIVERS/CHILDREN
3) SAFETY MANAGEMENT UPDATE
•SPD •SP •CFR •CSE
SUPERVISOR CONSULTATION
CASE CLOSED: SAFE AND PERMANENT HOME
PCPA DEBRIEF WITH CAREGIVERS
REVIEW HEARING