**MTN**

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION - JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

**JANE DOE,**  ) Courtroom:

DOB: )

AGE: YEARS OLD )

)

A Minor. )

**MOTION TO JOIN DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL SERVICES, AND DESERT REGIONAL CENTER AS PARTIES**

COMES NOW, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq., of FIRM, by and on behalf of **JANE DOE**, a minor, and submits this Motion to Join the Department of Health and Human Services, Division of Mental Health and Developmental Services, and Desert Regional Center (hereinafter "DRC") as Parties.

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

DATED this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2013.

**NOTICE OF MOTION**

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, DISTRICT ATTORNEY, DISTRICT ATTORNEY'S OFFICE;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Director, Nevada Department of Health and Human Services;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Manager of Family Services, Department of Family Services;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Case Manager, Department of Family Services

**PLEASE TAKE NOTICE** that a hearing on this Motion for relief will be held before the Eighth Judicial District Court located on the second floor of the Family Courts and Services Center located at 601 N. Pecos Road Las Vegas, Nevada 89101, on the       day of      , 2013 in Department K at            .m.

**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.**

DATED this \_\_\_\_\_ day of May 2013.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND STATEMENT**

JANE DOE came into Protective Custody on March 26, 2013. JANE is diagnosed with Autism (severe) and was removed from her natural mother’s home because she is unable to provide her with the proper care and supervision. (See Exhibit A). She is seventeen (17) years old and is currently placed at Child Haven shelter. Unfortunately since being placed in protective custody, JANE has bounced backed and forth between University Medical Center hospital and Child Haven shelter after going acute.

On April 23, 2013, at the Report and Disposition hearing, JANE was declared a ward of the court. At this hearing, counsel for JANE stressed that finding an appropriate placement was the imminent issue. At that time, counsel made a request to have JANE placed at Child Haven in a cottage separate from the other children. Recognizing the importance of identifying an appropriate placement for JANE, this court set a status hearing in two weeks to allow the Department and DRC additional time to find a home. On May 7, 2013, counsel reiterated that JANE still needed placement in a foster home due to the Department’s and DRC’s failure to identify a home. As a result of JANE’s constant fluctuation between Child Haven and UMC, this court granted counsel’s request to have JANE placed in a cottage alone to ease her transition until she could be permanently placed.

The Department of Family Services has failed to identify a foster home that can provide for JANE’s special needs. Despite being approved for DRC services in December 2012, DRC has also failed to identify a suitable home. Thus, it is imperative that DRC is held accountable for JANE’s placement, as they have a legal obligation to do so. DRC falls under the Division of Mental Health and Developmental Services which is under the Department of Health and Human Services. DRC (and its’ contracted private vendors) will likely be able to secure a long-term placement option for JANE.

**II. LEGAL ARGUMENT**

1. **DRC, THE DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL SERVICES, AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ARE LEGALLY OBLIGATED TO PROVIDE JANE WITH BOTH MEDICAL CARE AND PLACEMENT; NRS 432B.4655 GIVES THIS COURT THE POWER TO JOIN THESE ENTITIES AS PARTIES AND ISSUE ORDERS TO ENSURE THAT JANE’S NEEDS ARE PROPERLY MET.**

**1. JANE DOE is a minor who qualifies under the category of persons to whom DRC, the Department of Health and Human Services, and the Division of Mental Health and Developmental Services have a legal obligation to find placement.**

NRS 433, et. seq, sets forth the duties owed to *persons* suffering from mental illness and/or mental retardation, which is broad enough to include minors such as JANE. NRS 433.003(2) states that the legislative intent of the statute is "To charge the Division of Mental and Developmental Services, and the Division of Child and Family Services, of the Department with recognizing their duty to act in the best interests of their respective clients by placing them in the *least restrictive environment*."(note, the Division of Child and Family Services is a parallel agency to the Division of Mental Health and Developmental Services. Both fall under the umbrella of the Department of Health and Human Services.)

NRS 433A.115 defines "Mental illness" as: “any person whose capacity to exercise self-control, judgment and discretion in the conduct of the person’s affairs and social relations or to care for his or her personal needs is diminished, as a result of a mental illness, to the extent that the person presents a clear and present danger of harm to himself or herself or others.”

NRS 433.233(2) states: "The division [of Mental Health and Developmental Services] facilities providing services for mentally retarded persons and *persons with related conditions* are designated as: (a) Desert Regional Center...".

The foregoing statutes impute a legal obligation upon the Department of Health and Human Services, its underlying Division of Mental Health and Developmental Services, and the facilities there under, including Desert Regional Center, to fulfill its duty to assist those who seek to benefit from the Division’s resources.

As previously stated, JANE is eligible for DRC’s services and now seeks to benefit from them. JANE is asking DRC, the Department of Health and Human Services, and the Division of Mental Health and Developmental Services and this Court under its authority as set forth in NRS 432B.4655[[1]](#footnote-1)1 to fulfill its statutory duties and obligations to her, which includes placing her in a home that will serve her needs. Additionally, NRS 433.354 gives the Department through the Division of Mental Health and Developmental Services the power to execute contracts or agreements with essentially any party, private or public, in order to meet its statutory obligations to persons who are suffering from mental illness or mental retardation.

As illustrated by the previous statutes, DRC, through the Division and the Department of Health and Human Services, has the statutory power and legal obligation to perform within their statutory means to assist in providing placement for JANE that is suitable for her needs. To ensure that DRC and the agencies under which it falls meet their legal obligation, it is necessary to join these entities as parties.

**III. CONCLUSION**

JANE DOE has been in the custody of DFS since March 2013. As a minor who is suffering from mental health issues, JANE has the statutory right to be placed in a foster home where her needs will be properly met. To ensure that she is provided with the necessary care, the full cooperation of DRC with DFS is needed. NRS 432B.4655 gives this Court the power to hold DRC responsible for JANE’s placement in a home in an efficient manner. DRC is obligated under Nevada statutes to fulfill its duty to JANE.

JANE DOE respectfully requests that this court exercises its power to ensure expedient placement by immediately joining Desert Regional Center, the Division of Mental Health and Developmental Services, and the Department of Health and Human Services as parties. Furthermore, JANE asks that this court issues all necessary orders to ensure that her needs are fully addressed, including but not limited to, long-term placement.

Respectfully submitted this \_\_\_\_\_ day of May, 2013.

***CERTIFICATE OF MAILING***

I HEREBY CERTIFY that on the \_\_\_\_\_\_\_ day of May, 2013, I placed a true and correct copy of the foregoing ***MOTION TO JOIN DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL SERVICES, AND DESERT REGIONAL CENTER AS PARTIES***, First-Class postage prepaid, in the United States Postal Service at Las Vegas, Nevada, and addressed as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq.

Deputy District Attorney Juvenile

Family Court

601 N. Pecos Road, Room 470

Las Vegas, Nevada 89101

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Director

Nevada Department of Health and Human Services

4126 Technology Way, Room 100

Carson City, Nevada 89706

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq.

Manager of Family Services

Department of Family Services

121 S. Martin Luther King Blvd.

Las Vegas, Nevada 89106

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Case Manager

Department of Family Services

701 N. Pecos Road, Bldg. K

Las Vegas, Nevada 89101

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An employee of

FIRM

1. 1**NRS 432B.4655 Joinder of governmental entity or other person to certain proceedings to enforce legal bligation of such entity or person.** A court may issue an order to join any governmental entity or other person as a party in any proceeding concerning the protection of the child to enforce a legal obligation of the entity or person to the child if, before issuing the order, the court provides notice and an opportunity to be heard to the governmental entity or person. [↑](#footnote-ref-1)