**MOT**

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,**  ) Courtroom:

DOB: )

AGE: \_\_\_ YEARS OLD )

)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** )

DOB: )

AGE: \_\_\_ YEARS OLD )

)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** )

DOB: )

AGE: \_\_\_ YEARS OLD)

)

Minors. )

)

**MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS**

COMES NOW, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and through his attorney of record, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq. of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and brings this Motion for an Order to Allow \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to Testify by Alternative Means. This Motion is made pursuant to NRS 50.570 et seq., and is further based upon the Affidavit(s) and Exhibit(s) attached hereto and any other such documentary or oral evidence as may be presented at the hearing set for this Motion.

DATED this \_\_\_\_\_\_\_ day of June, 2011.

**NOTICE OF MOTION**

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., DEPUTY DISTRICT ATTORNEY, JUVENILE DIVISION;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., DEPUTY DISTRICT ATTORNEY, CIVIL DIVISION;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, DEPARTMENT OF FAMILY SERVICES;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, CASE MANAGER, DEPARTMENT OF FAMILY SERVICES.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION on for hearing before the above-entitled Court on the \_\_\_\_\_\_\_ **day of** \_\_\_\_\_\_\_\_\_\_, **2011 at** \_\_\_\_ **a.m./p.m.**

DATED this \_\_\_\_\_ day of June, 2011.

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s father \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”) before Hearing Master Femiano in Courtroom 22, Department O, on July 8, 2011 at 9:00 a.m. The Deputy District Attorney prosecuting the case has indicated she will be calling \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a minor, to testify at the hearing. As is set forth in the attached Letter from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s therapist, hereinafter referred to as “Exhibit A,” \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has indicated to his counselor that testifying in the presence of his father would cause him severe anxiety and distress.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s therapist has indicated that if he 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. Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ indicates in her letter that when \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is asked about his father he becomes very anxious, fidgety, and unfocused and has trouble calming himself down.[[1]](#footnote-1) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has also told Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that he fears for both his own safety and that of his mother, “whenever he is in his father’s presence.”[[2]](#footnote-2)

In recognition of Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s opinion that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ be allowed to testify by alternative means in accordance with the statutory provisions set forth below.

**II. LEGAL ARGUMENT**

NRS 50.570 grants this Court discretion to 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 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 resolution of the case, and the severity and duration of the emotional trauma that the child will suffer if not permitted to testify by alternative means.

In the instant case, the facts support permitting \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to testify outside the presence of his father by an alternative method in order to forestall any further harm to this young boy. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is six (“6”) years old and currently resides with foster parents; his mother, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was also charged in the instant petition due to her persistent drug abuse. Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has entered a “No Contest” plea and has voluntarily enrolled herself in drug detoxification treatment at Westcare. Since \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s father and his volatile relationship with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s mother, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The petition details numerous acts of domestic violence that Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ perpetrated against Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the children and also recounts numerous occasions when Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’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, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has expressed many times to counsel the intense anxiety he feels just thinking about having to testify in front of his father. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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 she will be able to maintain his composure with him in the room staring angrily or disapprovingly at him. Furthermore, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s therapist has written a letter to the Court indicating that she believes if \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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. Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ wrote, “due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s high level of anxiety and fearfulness, an alternate way of testifying such as remote or taped testimony may be more fruitful.”[[3]](#footnote-3)

Due to the private nature of the allegations contained in the petition, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s young age, and the salience of his testimony with regard to proving the allegations, NRS 50.580 supports the Court allowing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to testify by alternative means. Further, all requirements delineated in NRS 50.590 are satisfied, including the requirement that there be reliable alternative methods available by which to obtain the needed testimony from the child. Here, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ can testify privately to Hearing Master Femiano 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to testify by alternative means because permitting the same is readily achievable and will do no unfair prejudice to the defendant.

**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 means 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 means of testifying are met in this matter. Therefore, it is respectfully requested that this Court issue an order allowing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to testify by an alternative method.

**AFFIDAVIT OF COUNSEL**

STATE OF NEVADA )

)ss.

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ appointed to represent the subject minor, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. I have personal knowledge of the facts alleged herein or the assertions are based on information and belief.
2. I have met with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, age 6.
3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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.
4. Upon information and belief, the experience of testifying before his father will cause \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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 of June, 2011, by

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

NOTARY PUBLIC in and for

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of Nevada

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the \_\_\_\_\_\_ day of June, 2011, I placed a true and correct copy of the forgoing ***MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS***, First-Class postage prepaid, in the United States Postal Service at Las Vegas, Nevada and via facsimile as follows:

1. See Exhibit A. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. *See* Exhibit A. [↑](#footnote-ref-3)