**OBJ**

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

**JANE DOE,**  ) Courtroom:

DOB: )

AGE: )

)

**JOHN DOE,**  )

DOB: )

AGE: )

)

**CHILDS NAME,**  )

DOB: )

AGE: )

)

**CHILDS NAME,** )

DOB: )

AGE: )

)

Minors. )

**OBJECTION TO HEARING MASTER NAME’s RECOMMENDATIONS**

COMES NOW, JANE DOE, JOHN DOE, and CHILDS NAME, by and through their counsel, YOUR NAME, Esq., of the FIRM NAME, and hereby object to the Recommendations of Hearing Master NAME.

This Objection is made and based upon the following Memorandum of Points and Authorities, the affidavits attached hereto, the exhibits 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 of April, 2012.

**NOTICE OF MOTION**

TO: NAME, ESQ, DEPUTY DISTRICT ATTORNEY-JUVENILE DIVISION, FAMILY COURT

TO: NAME, CASE MANAGER, DEPARTMENT OF FAMILY SERVICES

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above-entitled Objection on for hearing before Department \_\_\_\_\_ of the Eighth Judicial District Court, Family Division, 601 North Pecos, Las Vegas, Nevada, on the day of , 2012 at a.m./p.m., or as soon thereafter as counsel may be heard.

DATED this day of , 2012

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **STATEMENT OF FACTS**

On or about July 27, 2004, siblings NAME OF CHILD (/REN), were first declared wards of the Court as a result of their mother’s unstable mental health condition, their mother’s inability to provide for the children, and their father’s incarceration. The children were placed together in the home of their paternal grandmother, and she was given guardianship over the children on November 10, 2004. The guardianship was terminated on December 11, 2006 following allegations of physical abuse inflicted upon the children’s oldest sister.

NAME OF CHILDREN were placed together in a higher level of care foster home through the Apple Grove agency. NAME and NAME still live together in the Apple Grove home at the present time. Following admissions to mental health facilities, the Department of Family Services (“DFS”) decided that an even higher level of care foster home would be appropriate for NAME. This additional treatment was not intended to permanently separate NAME from his siblings. NAME was then moved to St. Jude’s Ranch for Children, pending an opening at the Oasis On-Campus Treatment Home (“Oasis”). NAME then moved into Oasis on April 12, 2010. Since their separation, NAME and his siblings have continually inquired about when they would be reunited and voiced their lifelong desires to be placed together once again.

Following placement for over one (1) year at Oasis, NAME moved into a Desert Regional Center (“DRC”) home on August 15, 2012. Since that time, NAME behaviors have stabilized greatly. During NAME residence in the DRC home, an incident occurred in which there was a sexual encounter between a reportedly sexually-reactive sixteen (16) year old male co-resident and NAME, who was nine (9) years old at the time of the incident. Even though the DRC home was aware of the sexually-reactive teenager, lack of supervision at the DRC home led to NAME victimization. The staff member on duty at the time of the incident was terminated, and remedial measures including alarm installations were taken to ensure safety in the home. NAME treating therapist maintained that “due to the nature of the incident and the age differential NAME would be considered a victim and not a perpetrator.”[[1]](#footnote-1) On February 6, 2012, DRC staff conveyed an opinion that NAME was ready to be placed in an adoptive home based upon his progress.

Just as NAME has not been hospitalized since residing in the DRC home, NAME has also not been placed in a mental health facility since July 27, 2011. In its Report for Permanency and Placement Review, filed on March 1, 2012, DFS stated that “NAME has made a complete turn around [sic]. It appears that his surroundings play a large part in his behavior. His current placement has allowed NAME to be normal child [sic].”[[2]](#footnote-2) According to NAME’s DFS caseworker, he “recently was at NAME’s school and one of her teachers talked to this worker about what a wonderful student NAME is. It was reported that NAME is always in a good mood and a great student to have in class.”[[3]](#footnote-3) The caseworker further maintained that NAME “continues to open up” and “is coming into her own.”[[4]](#footnote-4) NAME does not exhibit behavioral problems, and she does not pose a threat of any kind to her siblings when placed with them.

The treating individual therapist for both NAME and NAME is NAME (“Ms. NAME”) and not the DRC psychologist NAME (“Dr. NAME”). Although it was the opinion of the DRC psychologist that NAME ought to be placed in an adoptive home alone, she is ultimately not his treating individual therapist or in a position to opine knowledgeably about the best interests of his sisters. She also did not possess any firsthand knowledge of NAME’s sisters. Dr. NAME was not in the position of Ms. NAME, an individual therapist with a great deal of quality time invested in working with both NAME and NAME. When Dr. NAME asserted that the needs of the NAME children would be greater than any parents could handle, no empirical data supported her comments. Hearing Master NAME ultimately did not hear from the children’s treating individual therapist when deciding that the siblings should never be placed together again.

The treating individual therapist Ms. NAME, who does individual therapy for both NAME and NAME, stated the following in a letter regarding sibling placement dated March 23, 2012:

Based on the information and knowledge I have of NAME and NAME at this time I would recommend *without reservation* that they be afforded the opportunity to be placed together.[[5]](#footnote-5)

Although at the review hearing on March 6, 2012 Hearing Master NAME initially considered setting a status check to consider the opinion of treating therapist Ms. NAME, he ultimately chose to disregard this crucial therapeutic opinion regarding placement of the children. Hearing Master NAME stated that he believed the DRC psychologist Dr. NAME to be “in the best position to determine the best interest of NAME.” In error, Hearing Master NAME rendered a decision to separate the bonded siblings forever without first hearing from the children’s current and longtime individual therapist, Ms. NAME.

1. **LEGAL ARGUMENT**
2. **The Court Should Reverse Hearing Master NAME’ Recommendation That The** NAME **Siblings Should Be Adopted Separately Because Hearing Master NAME Erroneously Disregarded The Opinion Of The Children’s Treating Therapist** NAME**.**

E.D.C.R. Rule 1.46 provides in pertinent part:

(d) 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 minor or parent or guardian of a minor may apply to the presiding judge for a hearing. The application for hearing must state the grounds on which the application is based and shall be accompanied by a memorandum of points and authorities. The presiding judge may, after a review of the record of such proceedings, grant or deny such application. In case no hearing by the court is requested, the findings and recommendation of the master, when confirmed or modified by an order of the court, become a decree of the court. A presiding judge may, on the court's own motion, order rehearing of any matter heard before a master.

(e) All rehearings of matters heard before a master will be before the juvenile judge who may at his or her discretion conduct a trial de novo. The court will review the transcript of the master's hearing 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.

(f) No recommendation of a master or disposition of a juvenile case will become effective until expressly approved by the juvenile judge.

On behalf of NAME, NAME, and NAME, Counsel respectfully submits that it was erroneous for Hearing Master NAME to determine that the sibling presumption listed in NRS 432B.550(5)(a) was rebutted, in light of the fact that Hearing Master NAME dismissed Counsel’s request for the court to consider the therapeutic opinion of treating therapist Ms. NAME. Hearing Master NAME made the crucial determination to permanently split the siblings into separate adoptive homes without hearing from Ms. NAME, the therapist for NAME and NAME.

During the review hearing on March 6, 2012, Hearing Master NAME was informed by Court Appointed Special Advocate (“CASA”) NAME that the children’s treating individual therapist Ms. NAME had personally communicated her favorable opinion on the placement of the children together. Hearing Master NAME initially indicated that he would permit Ms. NAME to address the court at a status check to be set out ninety (90) days before rendering a decision to split the children up forever. However, Hearing Master NAME then erroneously ruled on the presumption without permitting the therapist to communicate her vital opinion to the court.

The recommendation to forever separate NAME from his sisters was made by Hearing Master NAME after hearing from only one service provider, DRC psychologist Dr. NAME, who is not the treating therapist of any of the children. Dr. NAME is employed as a psychologist by DRC and has never treated NAME or NAME. Dr. NAME has no basis on which to comment on what is in the best interests of NAME and NAME. On the other hand, Ms. NAME in her own words has “been providing weekly clinical services to NAME and NAME for approximately a year and a half.”[[6]](#footnote-6) To disregard the therapeutic opinion of the treating individual therapist, Ms. NAME, is clearly erroneous. It is precisely this erroneous omission that warrants a reversal of Hearing Master NAME’ ultimate conclusion regarding the sibling presumption. In light of the dire life-altering consequences inherent in the separation of siblings into separate adoptive homes and the legal presumption in NRS 432B.550(5)(a) governing sibling placement, this decision by Hearing Master NAME to rule on the matter without first hearing from Ms. NAME was clearly erroneous.

In her letter regarding placement of the children, Ms. NAME referred to the “one singular incident of inappropriate sexual behavior” involving NAME which occurred at the DRC home.[[7]](#footnote-7) Ms. NAME stated as follows:

Due to the nature of the incident and the age differential NAME would be considered a victim and not a perpetrator. A significant part of his therapeutic work has been addressing his history of sexual trauma and identifying appropriate boundaries for which he has responded very well.[[8]](#footnote-8)

Whereas the DRC psychologist based her opinion that NAME should be adopted alone on the premise that NAME history of sexual behaviors would put other children at risk, NAME own treating therapist maintained that NAME was merely a victim rather than a perpetrator in the DRC home. Furthermore, NAME treating therapist stated that NAME has been successfully addressing his history in therapy.

Ms. NAME also commented on NAME desire to be placed with his sisters. Ms. NAME stated as follows:

NAME has a strong desire to be reunited with his sisters. In fact, he inquires weekly with this intern if his behavior has improved enough for him to be placed with his sisters. Should NAME not be given the opportunity to be placed with his siblings I believe it would be detrimental to his overall mental well being and functioning.[[9]](#footnote-9)

In her letter, Ms. NAME also commented on the history of sexual victimization of her patient NAME. Ms. Ware stated that during the time she has treated NAME, there have been “no incidents of sexualized behavior other than normal, age/developmentally appropriate behaviors.”[[10]](#footnote-10) Ms. NAME similarly commented on NAME’s desire to reunify with NAME. Ms. NAME stated that NAME remains hopeful that she will reunite with NAME.[[11]](#footnote-11) Ms. NAME also stated that she believed “it would negatively impact her emotional well being should being placed together be ruled out as an option.”[[12]](#footnote-12) Ms. NAME concluded that she would recommend *without reservation* that the children be afforded the opportunity to be placed together.[[13]](#footnote-13) When Hearing Master NAME hastily concluded that NAME should never again be placed with his siblings, he erroneously did so without consideration of Ms. NAME’s crucial therapeutic opinions.

1. **In Accordance With The Best Interest Presumption In NRS 432B.550(5)(a),** NAME**,** NAME**, And** NAME **Should Be Afforded The Opportunity To Be Placed Together.**

NRS 432B.550(5)(a) specifically mandates as follows:

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of his parents or guardian:

(a) It must be presumed to be in the best interests of the child to be placed together with his siblings.

Sibling relationships are too important to ignore or dismiss. Recognizing this, the Nevada Legislature amended NRS 432B.550 in 1999 to add a preference for the co-placement of siblings taken into the protective custody of the County or State.[[14]](#footnote-14) In 2005, the Nevada Legislature replaced this weaker “preference” for sibling co-placement with a *mandatory presumption*, through an amendment to NRS 432B.550.[[15]](#footnote-15) It became 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. It was clearly erroneous for Hearing Master NAME to find that DFS no longer has a duty to keep the NAME siblings together without considering the opinion of the children’s treating individual therapist.

1. **The Court Should Reverse Hearing Master NAME’ Recommendation Because The Presumption That Siblings Must Be Placed Together Has Not Been Rebutted And It Is In The Best Interest Of The** NAME **Siblings To Be Placed In The Same Adoptive Home.**

The children’s treating therapist Ms. NAME, who has provided weekly individual therapy to NAME and NAME for over one and a half (1 ½) years, has provided a justified therapeutic opinion that it would be in the best interests of the NAME siblings to have an opportunity to be placed together in the same adoptive home. Hearing Master NAME was unable to render a fully informed decision regarding the sibling presumption in light of the fact that Ms. NAME 's opinion was consciously excluded. The sibling relationship is oftentimes the longest lasting relationship in a person's life. If DFS is directed by the court to make no efforts to recruit for one adoptive resource for all three children, the children will be separated into different homes in perpetuity.

The NAME children are undeniably bonded to one another. During the years that NAME has been placed apart from NAME and NAME, the siblings have never stopped asking their attorney, caseworkers, therapists, and service providers when they will be allowed to reunite under the same roof. In her letter, Ms. NAME clearly represented her clients' repeated requests for placement with one another. Considering the fact that both NAME and NAME are victims who are continually making progress in therapy regarding their own victimization, and their treating therapist believes without reservation that the children should have an opportunity to be placed together, it was clearly erroneous for Hearing Master NAME to hastily find that the sibling presumption had been overcome.

1. **CONCLUSION**

Based upon the above and foregoing, Counsel respectfully requests this Honorable Court

to grant the following relief:

1. Review Hearing Master NAME’ Recommendations, and
2. Order that DFS make reasonable efforts to place the children together in a single adoptive home.

Respectfully submitted this \_\_\_\_\_\_\_ day of April, 2012.

1. Letter from Therapist NAME, dated 3/23/12, attached hereto as “Exhibit A.” [↑](#footnote-ref-1)
2. DFS Report for Permanency and Placement Review, filed 3/1/12, p. 9, attached as “Exhibit B.” [↑](#footnote-ref-2)
3. *Id.* at p. 5. [↑](#footnote-ref-3)
4. *Id.* at p. 6. [↑](#footnote-ref-4)
5. Letter from Therapist NAME, dated 3/23/12, attached hereto as “Exhibit A” (emphasis added). [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *See* Letter from Therapist NAME, dated 3/23/12, attached hereto as “Exhibit A.” [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *See Id.* [↑](#footnote-ref-10)
11. *See Id.* [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *See Id.* [↑](#footnote-ref-13)
14. The original language in 1999 stated as follows: “In determining the placement of a child … , if the child is not permitted to remain in the custody of his parents or guardian, preference must be given to *placing the child***:**

    *(a) With* any person related within the third degree of consanguinity to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this state.

    *(b) If practicable, together with his siblings*.” [↑](#footnote-ref-14)
15. The amended language is stated as follows:

    5.  In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of his parents or guardian**~~[~~**~~, preference~~**]** ***:***

    *(a) It must be presumed to be in the best interests of the child to be placed together with his siblings.*

    *(b) Preference*must be given to placing the child**~~[~~**~~:~~

    (a) ~~With~~**~~]~~** *with*any person related within the third degree of consanguinity to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

    **~~[~~**~~(b) If practicable, together with his siblings.~~**~~]~~** [↑](#footnote-ref-15)