

XXX XXX, State Bar No. xxxx
 XXXXXX XXX XXXXXX, UNIT X
 XXX XXXX XXXXX XXXX, Suite X
 XXXX XXXX, CA XXXX-XXX
 Telephone: (XXX) XXX-XXXX
 Facsimile: (XXX) XXX-XXX
 Attorney for: V., Minor

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF XXX XXXXXXX

In the Matter of

V.

a Minor.

Case Number: CK XXXX

**MINOR'S MEMORANDUM OF POINTS
AND AUTHORITIES RE: PATERNITY
STATUS OF Mr. C AND MOTHER'S § 388
PETITION**

Date: Feb. X, 2007

Time: 8:30

Dept.: XXX

On November X, 2006, this Court requested that all parties provide briefing as to the paternity status of Mr. C, and as to Ms. M's Welf. & Inst. Code § 388 petition requesting reunification services under § 361.5(d). Minor V. hereby submits the following Memorandum of Points and Authorities in response to the Court's request.

1. This Court should set a hearing to determine whether Mr. C qualifies as a *Kelsey S.* father.

As stated in the County Social Worker's Title 20 Service Log, the facts regarding Mr. C. are as follows. On October 2, 2006, the caseworker contacted alleged father Dxxx. and mother xxxx. to report that paternity testing indicated that Mr. D. was not V.'s father. On the same day, Ms. M. left a voicemail message stating that Mr. C. was the minor's "real" father, and providing

1 his address in Brooklyn, NY. On October 10, 2006, DCFS sent a notice and letter to Mr. C., and
2 later sent him an e-mail at an e-mail address provided by Ms. M.

3 Mr. C. made contact with DCFS on October 16, 2006. He stated that he had been living in
4 New York since December x, 2005, and that he previously resided with Ms. M from December
5 2003 to December 2005. He stated that he was unaware of Ms. M's pregnancy, or of the birth of
6 V. Mr. C stated that Ms. M had sent him pictures of V., and V. looked like him. He further stated
7 that he wanted custody of V.

8 On October 19, 2006, the DCFS caseworker spoke to Mr. L about Mr. C. Mr. L stated that
9 Mr. C was aware of the fact that he and Ms. M had also had a relationship in 2004, and had
10 threatened him over the phone and at his workplace. Mr. L also stated that he found it hard to
11 believe that Mr. C was unaware of Ms. M's pregnancy with V. Mr. L further stated that the reason
12 Mr. C moved to New York was to try to get custody of his 9-year-old daughter, who had been in
13 the custody of Mr. C's father. Ms. M also stated that this was Mr. C's reason for moving to New
14 York.

15 The Court of Appeal's decision in *In re Baby Boy V. (2006)*, 140 Cal.App.4th 1108,
16 provides guidance as to how this Court should proceed in this case. In *Baby Boy V.*, as in this case,
17 the child's mother left her baby at the hospital and did not provide the name of the father. The
18 baby was placed with foster parents who wished to adopt. Seven months later, appellant Jesus V.
19 contacted DCFS and said that the mother had just told him about the baby. He explained that the
20 mother had been in a drug rehabilitation program, so he did not see her for several months, and
21 only found out that she had had a baby when he met her by chance. The juvenile court in that case
22 refused to order paternity testing or family reunification services for Jesus V., and terminated
23 parental rights. The Court of Appeal reversed, and held that the juvenile court should have held a
24 hearing "to determine whether Jesus came forward promptly after learning of the baby's existence
25 and otherwise satisfied the requirements of *Adoption of Kelsey S.*" *Baby Boy V.*, 140 Cal. App. 4th
26 at 1119. If Jesus V. qualified as a *Kelsey S.* father and if paternity tests confirmed his biological
27 paternity, then the juvenile court should "investigate Jesus's fitness and, unless he is unfit ...
28

1 provide him with reunification services and visitation [and] consider anew all issues about the
2 appropriate permanent plan for Baby V.” *Id.*

3 The other requirements of *Kelsey S.* referred to in *Baby Boy V.* are as follows. A man
4 qualifies as a *Kelsey S.* father if he “promptly comes forward and demonstrates a full commitment
5 to his parental responsibilities – emotional, financial, and otherwise.” In making this
6 determination,

7 The father’s conduct both before and after the child’s birth must be considered. Once he
8 knows or reasonably should know of the pregnancy, he must promptly attempt to assume
9 his parental responsibilities as fully as the mother will allow and his circumstances permit.
10 In particular, the father must demonstrate ‘a willingness himself to assume full custody of
11 the child – not merely to block adoption by others’ ... A court should also consider the
12 father’s public acknowledgement of paternity, payment of pregnancy and birth expenses
13 commensurate with his ability to do so, and prompt legal action to seek custody of the
14 child.

15 *Adoption of Kelsey S. (1992), 1 Cal. 4th 816, 849 (citations omitted).*

16 In accord with *Baby Boy V.* and *Kelsey S.*, this Court should hold a hearing to determine
17 whether Mr. C knew or reasonably should have known of Ms M’s pregnancy and/or the birth of V.;
18 whether he promptly attempted to fulfill parental responsibilities as soon as he knew or reasonably
19 should have known of the pregnancy and/or birth; and whether he is currently willing and able to
20 assume custody of V., not just block adoption by others.

21 If so, then Mr. C qualifies as a *Kelsey S.* father and should be provided with reunification
22 services and visitation, unless this Court determines that he is unfit (e.g. because of the facts
23 underlying his loss of custody of his 9-year-old daughter).

24
25 **2. Mother’s § 388 petition should be denied, because she does not qualify for services**
26 **under § 361.5(d).**

27 Mother’s § 388 petition seeks to modify this Court’s order of March X, 2006 ordering no
28 family reunification services for mother and setting a § 366.26 hearing. The § 388 petition asks

1 that V. be returned to mother, or in the alternative that family reunification services be provided
2 pursuant to § 361.5(d).

3 Mother is not entitled to modification of the March 8, 2006 order. The § 388 petition and
4 accompanying declaration do not make the required showing that there are changed circumstances
5 and that modification of the court's prior orders would be in V's best interests. The changed
6 circumstances alleged in Ms. M's declaration are that she now regrets her prior abandonment of V.
7 and wants to care for him; and that she has started parenting classes and joined support groups,
8 reconciled with her family, and gotten a job with flexible hours. At most, this is a showing of
9 "changing," not changed circumstances.

10 Moreover, the record in this case clearly shows that it would not be in V's best interest to return
11 him to mother or provide mother with family reunification services. Ms. M left the hospital shortly
12 after V. was born without making any provision for his care. When contacted by DCFS, she stated
13 that she wanted the baby to be adopted. She did not attend the hearings on July X, 2006 or August
14 X, 2006; her first appearance in this case was on September 6, 2006, more than 6 months after V's
15 birth. Moreover, mother's actions regarding the paternity of V. have been deceptive and showed
16 disregard for V's best interests. She admittedly misled alleged father Mr. L into thinking that V.
17 had died. She also failed to provide contact information for biological father Mr. C until October
18 2006.

19 Given these facts, even if Ms. M had made a sufficient showing of changed circumstances, she
20 would be unable to meet the second requirement for a successful § 388 petition, of showing that
21 modification of the court's prior orders would be in V's best interests.

22 For all the reasons stated above, this court should deny Ms. M's § 388 petition.

23
24 Dated: December , 2006

Respectfully submitted,

25 XXXXXXXX XXX XXXXXXXX

26 _____
27 By: XXX XXXX
28 Attorney for Minor V.