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

In the Matter of	)	Case Number: XXXX
	)	
(CHILD) XXXX,	)	
	)	<b>CHILD'S TRIAL BRIEF RE: NEED FOR ON-</b>
a Child.	)	<b>GOING SUPERVISION OF CHILD</b>
	)	<b>PURSUANT TO WIC §§361.2(b)(2), (b)(3)</b>
	)	
	)	
	)	Date: X, 2006
	)	Time: 8:30 a.m.
	)	Dept.: XXXX

**INTRODUCTION**

(Child) submits this trial brief in support of his request to continue Juvenile Court supervision of him in the home of his non-custodial father in Texas. Given (Child)'s lack of a prior relationship with his father and the little that is known about the father and his live-in girlfriend, on-going supervision is necessary and in (Child)'s best interests. Furthermore, (Child) requests that the County Social Services Agency ("Agency") be ordered to seek a voluntary agreement with Texas to monitor (Child)'s well-being as authorized by the Interstate Compact on Placement of Children ("ICPC").

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**ARGUMENT**

**I. ONGOING SUPERVISION OF (CHILD) IS NECESSARY TO ENSURE HIS WELL-BEING; (CHILD) HAS VIRTUALLY NO PRIOR RELATIONSHIP WITH HIS NONCUSTODIAL FATHER, ABOUT WHOM LITTLE IS KNOWN**

When placing a dependent child with a previously non-custodial parent under Welfare and Institutions Code (“WIC”) §361.2, the Juvenile Court has three options:

- (1) Grant legal and physical custody to the non-custodial parent and terminate jurisdiction. (WIC §361.2(b)(1).) However, before it may terminate jurisdiction, the court is first required to consider whether on-going supervision of the child is necessary. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1129.)
- (2) Order that the parent assume custody subject to juvenile court jurisdiction and require that a home visit be conducted within three months. In determining whether to proceed according to this subsection, “the court shall consider any concerns that have been raised by the child’s current caregiver regarding the parent.” After the social worker completes the home visit and files a report with the court, the court may then either terminate jurisdiction or continue supervision. (WIC §361.2(b)(2).)  
This subsection was added as part of “Adam’s Law” (S.B. 726), which took effect on January 1, 2006. The Legislature passed Adam’s Law in response to an infant in foster care that was placed with his non-custodial father despite the foster parents’ concerns and was later killed by the father. The intent of Adam’s Law is to protect foster children from being harmed by absent non-custodial parents. (See legislative history for S.B. 726 at <[http://www.leginfo.ca.gov/pub/bill/sen/sb\\_0701-0750/sb\\_726\\_cfa\\_20050701\\_151348\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/bill/sen/sb_0701-0750/sb_726_cfa_20050701_151348_asm_comm.html)>.) Also added by Adam’s Law was WIC §366.23, which requires social workers to inform children’s caregivers of their right to provide written input to the court about any proposed placement with a non-custodial parent. The court must receive and consider this information before placing with a non-custodial parent. (WIC §366.23, added by Stats. 2005, c. 632 (S.B. 726), §3.)
- (3) Place the child in the physical custody of the non-custodial parent and continue jurisdiction. The court may order family reunification services for the formerly custodial parent, family maintenance services for the non-custodial parent, or both. (WIC §361.2(3).) If the court chooses this option, it must hold a review hearing in six months to determine which parent shall have custody of the child and whether supervision is still necessary. (WIC §361.2(3); WIC §366.21 (e); see also *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.)

(Child)’s case presents exactly the type of situation that the Legislature enacted Adam’s Law to address. The father here has been absent for most of (Child)’s life, and very little is known about him. The father has never appeared before the court. No criminal records checks have been done on the father or his live-in girlfriend, who was not even interviewed by the Agency. (Child)’s

1 father is 68 years old and has health problems. No social worker has visited (Child) in the father's  
2 home to assess his well-being.

3 Furthermore, (Child)'s caregiver since June 2005 has expressed his concern that placing  
4 (Child) with his father without some sort of transition period will be detrimental to him, given that  
5 (Child) hardly knows his father. By the father's own admission, the only significant contact he has  
6 had with his son in the past nine years was a single month-long visit last summer, during which the  
7 father's girlfriend hit (Child) with a belt. Although the father has blamed the mother for not  
8 allowing him more contact, there is no evidence that he ever attempted to obtain custody or  
9 visitation with (Child) through the courts. Nor does it appear that the father inquired of relatives or  
10 others about (Child)'s well-being, since the father claims to have been unaware that the mother was  
11 neglecting (Child). Yet, between 1994 and 2004, there were seven child abuse hotline referrals  
12 alleging abuse or neglect to (Child). The father admitted to knowing that the mother previously  
13 had a drug problem. Also, the maternal uncle said that prior to Juvenile Court intervention, the  
14 mother and (Child) moved from shelter to shelter and (Child) once missed an entire semester of  
15 school.

16 Under these circumstances, immediate termination of jurisdiction is clearly not in (Child)'s  
17 best interests, and a period of court supervision and agency monitoring is warranted under WIC  
18 §361.2 (b)(2) and WIC §361.2 (b)(3).

19 In *Austin P.*, the court found substantial evidence supported continuing Juvenile Court  
20 supervision over a 10-year-old child who was placed with his non-offending, non-custodial father,  
21 where the father had only had sporadic contact with his son over the past 10 years and the agency  
22 thought it should monitor the child's transition into the father's home. (*Austin P.*, *supra*, 118  
23 Cal.App.4th 1124, 1134.) The social worker believed that the child needed individual and conjoint  
24 therapy that would not occur if the case was closed. In addition, the social worker was concerned  
25 that the father and his wife had been aware that the child was being abused and neglected by the  
26 mother and had done nothing to intervene. The social worker was also recommending continued  
27 jurisdiction in order to provide reunification services to the mother, with whom the child hoped to  
28 reunify. (*Ibid.*)

1 The facts of this case are very similar to those of *Austin P.* (Child) has had almost no  
2 contact with his father, and the father failed to take any action to protect him in the past.  
3 Moreover, (Child) wants to reunify with his mother and live near his maternal relatives in  
4 California. Both the social worker and (Child)’s teacher have said he is in need of counseling.  
5 However, unlike the agency in *Austin P.*, here, the agency has recommended immediate  
6 termination of jurisdiction over (Child), though it has not shown how this would be in (Child)’s  
7 best interests.

8 One possible reason for the agency’s atypical recommendation in this case is the difficulty  
9 of supervising (Child) in Texas. Nevertheless, the solution is not to prematurely abandon (Child),  
10 but instead to seek supervision from Texas child welfare authorities through the ICPC.

11 Regardless of the Agency’s recommendation, given the facts before the court, there is no  
12 rational basis for finding that on-going supervision is unnecessary or that immediate termination of  
13 jurisdiction is best for (Child). (See WIC §202(d); *In re Luke M.* (2003) 107 Cal.App.4th 1412,  
14 1423 [“state’s compelling interest in protection requires the court to focus on the child’s placement  
15 and well-being, rather than on a parent’s custody challenge”].)

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17 **II. AT MINIMUM, THE AGENCY SHOULD BE ORDERED TO SEEK A**  
18 **VOLUNTARY AGREEMENT WITH TEXAS UNDER THE ICPC TO**  
19 **MONITOR (CHILD) IN THE HOME OF HIS FATHER**

20 Preliminarily, (Child) addresses the Agency’s argument in its response to (Child)’s writ  
21 petition, that compliance with the ICPC was not required before placing (Child) with his father in  
22 Texas in part because California Rules of Court,<sup>1</sup> rule 5.616(b)(1), which requires the court to  
23 apply the ICPC if it retains jurisdiction in order to provide services to or place conditions on the  
24 non-custodial parent, conflicts with the ICPC and case law and is therefore invalid. Not only is the  
25 agency’s position in this case contrary to its own policy as discussed above, it conflicts with  
26 CJER’s California Judges Benchguide, CEB’s California Juvenile Dependency Practice, and  
27 Seiser’s California Juvenile Courts: Practice and Procedure, all of which state that compliance with

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1 All further references to rules are to the California Rules of Court.

rule 5.616 is required. (Cal. Judges Benchguide: Juvenile Dependency Disposition Hearing (CJER 2005) §102.50, p. 102-46; 1 Cal. Juvenile Dependency Practice (Cont.Ed. Bar 2004) §5.36, p. 231; Seiser & Kumli, California Juvenile Courts: Practice and Procedure (2005 ed.) §2.128[3], p. 2-240.) According to the CJER Judges Benchguide:

If the court places the child with an out-of-state non-custodial parent and retains jurisdiction or maintains dependency in order to provide services to or impose conditions on the non-custodial out-of-state parent, the Interstate Compact on the Placement of Children (ICPC) must be applied . . . .

Two cases hold that the ICPC applies only to interstate foster care placements or to placements preliminary to adoption, not to placements with a non-custodial parent. *Tara S. v. Superior Court* (1993) 13 CA4th 1834, 1837-1838, 17 CR2d 315; *In re Johnny S.* (1995) 40 CA4th 969, 977, 47 CR2d 94. However, the continuing viability of these cases is unclear, given the promulgation of Cal Rules of Ct 5.616, which was adopted as a model for other ICPC states and was designed to clarify any confusion about when the compact applies.

JUDICIAL TIP: If a child is with a parent in another state, and dependency in California is continued, the compact provisions must be observed. The court must maintain supervision over the dependent child who resides in another state.

(Cal. Judges Benchguide: Juvenile Dependency Disposition Hearing (CJER 2005) §102.50, p. 102-46.)

Neither *Johnny S.*, *Tara S.*, or *McComb v. Wambaugh* (3d Cir. 1991) 934 F.2d 474, relied on by the agency, considered rule 5.616, which was not yet enacted at the time these cases were decided.<sup>2</sup> Rules of Court “have the force of statute to the extent that they are not inconsistent with legislative enactments and constitutional provisions.” (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1011, quoting *In re Richard S.* (1991) 54 Cal.3d 857, 863.) Thus, until a California appellate court considers the issue and finds in a published opinion that rule 5.616 is inconsistent with the ICPC and therefore invalid, it would seem that the most prudent course of action for the Juvenile Court would be to comply with it.

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<sup>2</sup> Nor did these cases consider the validity of the current version of ICPC Regulation 3, adopted by the Association of Administrators of the ICPC and effective as of July 2, 2001, which provides with certain exceptions that the definition of “placement” contained in the ICPC “includes the arrangement for the care of a child in the home of his parent . . . .” However, the Arizona Court of Appeals did consider Regulation 3 and found that it was not inconsistent with the ICPC. (*Arizona Dept. of Economic Sec. v. Leonardo* (2001) 200 Ariz. 74, 80.) The court noted that the *McComb* case, which both *Johnny S.* and *Tara S.* cited with approval, had found a prior and less circumscribed version of Regulation 3 to be invalid. (*Id.* at p. 81.) “We agree instead with the majority of jurisdictions that have found the ICPC applicable to out-of-state placement of a child with a non-custodial parent.” (*Ibid.*)

1 In any event, even assuming that the Agency is correct and that compliance with the ICPC  
2 is not required, the Agency nevertheless may enter into a voluntary agreement with Texas for  
3 supervision of (Child). (*Johnny S., supra*, 40 Cal.App.4th 969, 979 [under ICPC, California child  
4 welfare agency could choose to enter into voluntary agreement with a Texas agency to monitor  
5 child].) The ICPC provides that a public sending agency “may enter into an agreement with an  
6 authorized public or private agency in the receiving state providing for the performance of one or  
7 more services in respect of that case by the latter as agent for the sending agency.” (Fam. Code,  
8 §7901, art. 5(b).) Moreover, “[a]ny requirements for visitation, inspection, or supervision of  
9 children . . . in another party state which may apply under the law of this state shall be deemed to  
10 be met if performed pursuant to an agreement entered into by appropriate officers or agencies of  
11 this state or a subdivision thereof as contemplated by paragraph (b) of Article 5 of the [ICPC].”  
12 (Fam. Code, §7906.) The court ordered the Agency to provide family maintenance services to the  
13 father at the last hearing.

14 For the reasons already mentioned, the Agency should be ordered to enter into a voluntary  
15 agreement for supervision of (Child) by Texas. It is simply not in (Child)’s best interests, now that  
16 the state has finally intervened to protect him from his mother, to leave him on his own with an  
17 elderly father whom he barely knows, in a different state, far from his maternal relatives and  
18 support system, without any assurances that the father is capable of providing him with a safe and  
19 nurturing home.

### 20 21 **CONCLUSION**

22 For the reasons stated (Child) respectfully requests that jurisdiction be maintained and that  
23 the court order the Agency to enter into a voluntary agreement with Texas under the ICPC to  
24 monitor (Child) in the home of his father.

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28 Dated: March 2, 2006

Respectfully submitted,

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By: XXXX XXXX and XXXX XXXX  
Attorneys for (Child) XXXX, Child