

(Firm)
BY: (Attorney) CSB#
Address XXXXXXX
Phone XXXXXXX
Fax XXXXXXX

Attorney for MINORS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF X
JUVENILE DIVISION

In re the Matter of:

M.R. AND R.R.

Minors.

) Case No.:

)
) NOTICE OF MOTION FOR MINORS'
) TESTIMONY TO BE OUTSIDE THE
) PRESENCE OF PARENT OR PARENTS

)
) DATE: X
) TIME: 8:30 A.M.
) DEPT: X
)
)

NOTICE IS HEREBY GIVEN that on X or as soon thereafter as the matter can be heard in Department ____, _____, of (Firm), attorney for the children, M.R. and R.R. will move this court for an order that minors' testimony will be outside the presence of the parent or parents, at the contested 387 jurisdictional/dispositional hearing scheduled for X in this Department.

This motion is requested pursuant to Welfare & Institutions Code Section 350(b)(1) and (3) to have the minor testify outside the presence of the parent or parents.

This motion is based on the grounds that compelling the children to testify in the presence of their parents would intimidate the children and discourage the children from providing truthful and open testimony.

This motion will be based on the pleadings and reports previously presented to the court which are part of the court file, as well as this notice of motion, attached points and authorities, and specifically, the information provided by R.R.'s psychologist.

DATED: _____

Attorney for MINORS

(Firm)
BY: (Attorney) CSB#
Address XXXXXXX
Phone XXXXXXX
Fax XXXXXXX

Attorney for MINORS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF X
JUVENILE DIVISION

In re the Matter of:)	Case No.:
)	
M.R. AND R.R.)	MOTION FOR THE TESTIMONY OF A
)	MINOR TO BE TAKEN IN CHAMBERS
)	OR OUTSIDE THE PRESENCE OF THE
)	MINOR'S PARENTS
)	W & I CODE SECTION 350(b)(1)(3)
Minors.)	
)	DATE:
)	TIME:
)	DEPT:

On behalf of the minors, M.R. and R.R., minors' counsel request that if it is mother's intention to receive testimony from either minor, that this testimony be heard either in chambers or outside the presence of the minors' parent or parents, pursuant to Welfare & Institutions Code Section 350(b)(1) and (3). In the instant case, should the minors' testimony be necessary, the minors should testify outside the presence of their parents in order to insure both truthfulness of their testimony as well as to insure that they are not afraid to testify openly and truthfully to the court.

The mother, D.R., has admitted to the minor R.R.'s counselor, E.G., that she told her sons to lie about what has and has not occurred in their home. She has since

acknowledged that this was wrong and that the minors should discuss what has occurred in the home and their feelings about it. However, it is my belief that their testimony would be more truthful outside the presence of their parent. These minors are 10 and 12 years old respectively, and are still very influenced by their mother's feelings and opinions. They very much love her and do not want to disappoint her or her instructions to them.

In the instant case, although the minors have been undergoing therapy and have been encouraged to be open about what occurred in their home as well as their feelings about it, they may still feel intimidated to tell the truth with their mother in the courtroom.

Minors' counsel has no objection to minors' testimony being taken in court without the presence of the parent, and the parent having that testimony read back to him or her thereafter. It is minors' counsel's impression from the therapist's reports and recommendation that testimony would not be detrimental to them, however, would be more truthful without their mother present in the courtroom.

It is for the above listed circumstances, minors' counsel requests that their testimony be taken outside the presence of their parent or parents, pursuant to Welfare & Institutions Code Section 350(b)(1) and (3).

DATED: _____

Attorney for MINORS

(Firm)
BY: (Attorney) CSB#
Address XXXXXXX
Phone XXXXXXX
Fax XXXXXXX

Attorney for MINORS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF X
JUVENILE DIVISION

In re the Matter of:

M.R. AND R.R.

Minors.

) Case No.:

)
) POINTS AND AUTHORITIES IN
) SUPPORT OF MOTION FOR MINORS'
) TESTIMONY TO BE OUTSIDE THE
) PRESENCE OF PARENT OR PARENTS

)
) DATE:
) TIME: 8:30 A.M.
) DEPT:

The minors, M.R. and R.R., were re-placed into protective custody pursuant to a Welfare & Institutions Code petition under Welfare & Institutions Code Section 387 on X. It has been alleged that the minors were inappropriately touching their siblings, as well as a neighbor, A.L., in the bedroom with the mother, D.R., present in the home. According to the report, mother failed to protect her other children from the inappropriate sexual activity of M.R. and R.R. On the date for the 387 jurisdictional hearing, the mother set the matter for a pre-trial conference and a trial date was set for a contested jurisdictional/dispositional hearing. At the pre-trial conference, mother's counsel indicated that he would like the testimony of the minors, M.R. and R.R. at the

trial in this Department. Upon reviewing the documents provided both by the Department of Health and Human Services as well as the documentation provided by R.R. and M.R.'s therapist, it is the opinion of minor's counsel that it would promote more truthful testimony for the minors to testify outside the presence of their parent or parents. It is the opinion of minors' counsel that testimony in front of the parent or parents would lessen the veracity and openness of the minors in that the mother has encouraged them to lie with regard to these incidents in the past.

LEGAL ARGUMENT

A. THIS COURT SHOULD FIND THAT THESE CHILDREN SHOULD TESTIFY OUTSIDE THE PRESENCE OF THEIR PARENT OR PARENTS AT TRIAL

Welfare & Institutions Code Section 350(b)(1) and (3), states that the testimony of a minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present and any of the following circumstances exists: 1) The court determines the testimony in chambers is necessary to ensure truthful testimony; and 2) The minor is afraid to testify in front of his or her parent or parents.

In the present case, M.R. and R.R. minors' counsel request that if it is mother's intention to receive testimony from either minor, that this testimony be heard either in chambers or outside the presence of the minors' parent or parents, pursuant to Welfare & Institutions Code Section 350(b)(1) and (3). If the minors' testimony is needed, they should testify outside the presence of their parents in order to insure the truthfulness of their testimony as well as to insure that they are not afraid to testify openly and truthfully to the court.

1 In the instant case, the mother, (Mother), has admitted to the minor R.R.'s
2 counselor that she told her sons to lie about what has and has not occurred in their
3 home. She has since acknowledged that this was wrong and that the minors should
4 discuss what has occurred in the home and their feelings about it, however, it is my
5 belief, that their testimony would be more truthful outside the presence of their parent.
6 These minors are only 10 and 12 years old respectively, and are still very influenced by
7 their mother's feelings and opinions. They very much love her and do not want to
8 disappoint her or her instructions to them.
9

10 In the instant case, even though the minors have been undergoing therapy and
11 have been encouraged to be open about what has and has not occurred in their home
12 as well as their feelings about it, they may still feel intimidated to tell the truth with their
13 mother in the courtroom.

14 Minors' counsel has no objection to minors' testimony being taken in court
15 without the presence of the parent, and the parent having that testimony read back to
16 him or her thereafter. It is minors' counsel's impression from the therapist's reports and
17 recommendation, that testimony would not be detrimental to them, however, would be
18 more truthful without their mother present in the courtroom.
19

20 **B. IT IS WITHIN THIS COURT'S DISCRETION TO ORDER THAT THE MINORS**
21 **MAY TESTIFY OUTSIDE THE PRESENCE OF THEIR PARENT OR PARENTS**
22 **IN ORDER TO ENSURE TRUTHFUL TESTIMONY WITHOUT INTIMIDATION.**

23 Pursuant to Welfare & Institutions Code Section 350(b)(1) and (3), it is within the
24 court's discretion as to whether testimony outside the presence of parent or parents
25 would promote more truthful testimony and less intimidation on the part of the parents
toward the minors.

1 In the current matter, although mother has admitted that her prior suggestion to
2 lie was incorrect, it still nonetheless affects the minors and may affect their truthful
3 testimony.

4 This court should use its discretion to ensure the minors' truthful testimony by
5 having the minors testify outside the presence of their parent or parents, not interfering
6 with their parents' due process right to hear this testimony by having their counsel
7 present and/or their testimony read back to them by the court reporter.
8

9 **CONCLUSION**

10 Minors' counsel has provided the court with ample grounds demonstrating that
11 the minors' testimony would be more truthful and there would be less intimidation if it
12 were conducted outside the presence of the parent or parents. Evidence to be
13 introduced through the children's testimony can be introduced through testimony
14 outside the presence of the parents with parents' counsel present. Parents can then
15 elect if they so desire to have the testimony read back through the court reporter.

16 Based on the above stated facts and arguments, child's counsel respectfully
17 requests that this court order that the testimony of M.R. and R.R. be outside the
18 presence of the parent or parents.
19
20
21

22 DATED: _____

23 Attorney for MINORS
24
25

PROOF OF SERVICE

Case Name: IN RE: R./R.

Court: COUNTY SUPERIOR COURT; JUVENILE DIVISION

Case No.:

I am a resident of the United States and of the State of California. I am employed in the County of. My business address. My business telephone number is (916) 731-4981; fax number is. I am over the age of eighteen years. I am not a party to the within action or proceeding. On _____, 2001, I served the following document(s):

- 1. NOTICE OF MOTION FOR MINORS' TESTIMONY TO BE OUTSIDE THE PRESENCE OF PARENT OR PARENTS**
- 2. POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR MINORS' TESTIMONY TO BE OUTSIDE THE PRESENCE OF PARENT OR PARENTS**

I am familiar with the practice of (firm) for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above-mentioned document(s) would have been deposited with the United States Postal Service on the same day on which it was placed at (firm) for deposit

XX by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the addresses set forth below. (CCP §1011)

ATTORNEY AT LAW

ATTORNEY AT LAW

COUNTY COUNSEL

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on _____, California.
