

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

Attorney for (MOTHER)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF XXXXXXX
JUVENILE DIVISION

In re the Matter of:) Case No.:
)
)
W. MINORS) NOTICE OF MOTION AND MOTION
) FOR ORDER CONTINUING
) TRIAL
)
)
) DATE: x, 2007
) TIME: 1:30 P.M.
) DEPT.:
)
_____)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On the above referenced date and time, the mother, (Mother), will move this court for an order continuing the dispositional portion of the trial date which is currently set for x, 2007 at 1:30 p.m. in Department XXXX.

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Said motion will be made on the ground that good cause exists for the continuance of this trial. Said motion will be based on this notice, on the attached motion, and on all pleadings, records, and papers on file.

DATED: _____

(Attorney)
Attorney for (MOTHER)

I, declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and that this declaration was signed at _____, California.

DATED: _____

Attorney for (MOTHER)

the minor, X, notified the court and counsel for the mother that she would be requesting that the mother not receive services. Additionally, an addendum was prepared which had not been provided to all counsel. The addendum contained a Welfare & Institutions Code Section 361.5(B)(13) analysis regarding the mother. The Department's position was that while Welfare & Institutions Code Section 361.5(B)(13) applied, services were appropriate as the mother was participating in a residential treatment program and the children were emotionally bonded to her. The matter was set for trial by X with a trial date of X.

II.

LAW AND ARGUMENT

THE COURT HAS AUTHORITY TO CONTINUE THIS MATTER

Pursuant to Welfare & Institutions Code, Section 352, the Court may continue any hearing provided that no continuance shall be granted that is contrary to the interest of the minor. Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.

In the instant case, the mother has been precluded from garnering critical evidence necessary to meet her burden due to the fact that this trial has been set within 15 days.

In the instant case, the Department of Health and Human Services is alleging that Welfare & Institutions Code Section 361.5(B)(13) applies. If Welfare & Institutions Code Section 361.5(B)(13) applies, the court can only order reunification services if the court finds by clear and convincing evidence that reunification is in the best interest of the child. In this case, the burden of proof falls on the mother and the Department since the Department is requesting that the mother be given services in this case.

Upon learning that this matter would be set for trial, counsel for the mother immediately made diligent efforts to garner evidence he believes may be relevant in the determination of the issue as to whether offering services would be in the best interest of this child. Unfortunately, due to the fact that this trial was set on only 15 days notice, counsel for the mother has been unable and will not be able to procure that information on such short notice. Consequently, the mother is requesting that disposition in this case be continued. Welfare & Institutions Code Section 358(3) states as follows:

If the social worker is alleging that subdivision (b) of Section 361.5 is applicable, the court shall continue the proceedings for a period not to exceed thirty (30) days.

In the instant case, the social worker is alleging that subdivision (b) of §361.5 is applicable.¹ Furthermore, counsel for the minor is not only alleging that Welfare & Institutions Code Section 361.5(B)(13) applies, but she is also requesting that the court not order services in this case. Consequently, the burden effectively shifts to counsel for the mother to prove by clear and convincing evidence that it would be in the minor's best interest to provide services. This requires counsel for the mother to garner additional information which is not available prior to the trial in this case. Therefore, a continuance of this matter is respectfully requested.

In light of the circumstances set out above, it is respectfully requested that the dispositional portion of the trial in this case currently set for X be continued.

Respectfully submitted,

DATED: _____

Attorney for (MOTHER)

¹ While the Department is recommending services, nonetheless the Department has found that §361.5 is applicable, thus shifting the burden.

PROOF OF SERVICE

Case Name: W. MINORS

Court: XXXXXXXXX COUNTY SUPERIOR COURT; JUVENILE DIVISION

Case No.: X

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

- 1. NOTICE OF MOTION AND MOTION FOR ORDER CONTINUING TRIAL
- 2. POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER CONTINUING TRIAL
- 3. ORDER CONTINUING TRIAL

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

X by causing a true copy thereof to be delivered to the person(s) at the addresses set forth below, by and/or through the services of:

- 1. X FAX (Followed by First Class Mail; Rules of Court §2009 and §2010) Pursuant to Rules of Court §2009(i)(3), this document was sent by facsimile transmission and this transmission was reported as complete and without error.

XXXXXXXXXX, COUNTY COUNSEL

(Address)

FAX NO. (XXX) XXX-XXXX

XXXXXXXXXX, Attorney

(Address)

FAX NO. (XXX) XXX-XXXX

XXXXXXXXXX, Attorney

(Address)

FAX NO. (XXX) XXX-XXXX

XXXXXXXXXX, ATTORNEY AT LAW

(Address)

FAX NO. (XXX) XXX-XXXX

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