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Attorney at Law

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XXXX XXXX, XX XXXXX

Telephone (XXX)

Attorney for Minors J. and K. XXXX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF XXXXX,

JUVENILE COURT

In the Matter of:

A. XXXX, et. al,

Minors

CASE NUMBER: XXXX

NOTICE OF MOTION AND MOTION TO  
BE RELIEVED AS COUNSEL OF  
RECORD; MEMORANDUM OF POINTS  
AND AUTHORITIES; DECLARATION OF  
M.

Date:

Time:

Department: XXX

TO: ALL PARTIES HEREIN AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, on [DATE], 2006 at 8:30 A.M., or as soon thereafter as this motion may be heard in Department XXX, attorney M pursuant to Welfare and Institutions Code § 317(d), and California Rules of Court, Rule 5.660(c)(2), will, and by this does, ask the court for an order to be relieved as counsel of record for J. and K. two of the three minors involved in this matter. (A. is represented by separate counsel.)

1           This motion is based upon the declaration of M, attorney for the minors, the Points and  
2 Authorities filed herewith and such other evidence and argument as may be presented at the time of the  
3 hearing.  
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6 DATED: February \_\_, 2006

XXXXXX XXX XXXXXXXX

Respectfully Submitted,

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10 By \_\_\_\_\_

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Moving Party  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

- I. **Ca. Welf. & Inst. Code § 317(d) permits counsel to withdraw for “good cause,” and Ca. Rule of Court Rule 5.660 requires minors’ counsel to withdraw when an actual conflict arises.**

Ca. Welf. & Inst. Code § 317 provides for appointment of counsel for parents and children involved in dependency proceedings, and provides that:

(d) The counsel appointed by the court shall represent the parent, or guardian, or minor at the detention hearing and all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent or minor unless relieved by the court upon the substitution of other counsel or for cause. ...

The phrase, “for cause”, refers to a good reason personal to the individual sought to be removed which concerns the ability or fitness of the appointee to perform the duty imposed upon him, or is related to the administration of the office. *In re Tanya H.*, (1993) 17 Cal. App 4<sup>th</sup> 825, 831.

Ca. Rules of Court, Rule 5.660 further elaborates on the duties of minors’ counsel in dependency cases. The Rule allows one attorney to be appointed to represent a group of siblings involved in the same dependency case. However, the Rule recognizes and provides for the possibility that a conflict of interest will arise among siblings as the case progresses. The Rule requires that:

(D) If an attorney believes that an actual conflict of interest ... developed during representation, the attorney must take any action necessary to ensure that the siblings’ interests are not prejudiced, including:

- (i) Notifying the juvenile court of the existence of an actual conflict of interest among some or all of the siblings; and
- (ii) Requesting to withdraw from representation of some or all of the siblings

1 (E) If the court determines that an actual conflict of interest exists, the court must relieve  
2 the attorney from representation of some or all of the siblings.

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4 Ca. Rule of Court, Rule 5.660(D), (E); *see In re Celine R. (2003) 31 Cal.4<sup>th</sup> 45, 58* (“After the initial  
5 appointment, the court will have to relieve counsel from multiple representation if, but only if, an actual  
6 conflict arises”). As set forth in the accompanying Declaration of M, an actual conflict of interest has  
7 arisen between the minors J. and K.

8 Therefore, M seeks to withdraw from the representation of both minors. Rule 5.660 allows an  
9 attorney to continue to represent one sibling after withdrawing from representation of another sibling  
10 due to a conflict of interest, but only in situations where the attorney has “exchanged no confidential  
11 information with any sibling” whose interests conflict with the sibling the attorney continues to  
12 represent. Rule 5.660(F)(ii). In this case, M has represented both siblings for many years, and has  
13 exchanged confidential information with both of them.  
14

15 **II. The good-faith representations of minors’ counsel are a sufficient basis for this Court to**  
16 **allow withdrawal under Rule 5.660.**

17 As stated in more detail in the accompanying Declaration, an actual conflict of interest has arisen  
18 between the minors J. and K. An incident is alleged to have occurred during a recent visit involving  
19 both minors that, if it actually occurred as reported, might preclude their being placed together in the  
20 future. Minor J. has expressed the desire to remain in his current foster home, with the XXXX family.  
21 Minor K. has expressed the desire to be placed in the same foster home in the future. Thus, the  
22 expressed interests of the two minors are actually in conflict, and the minors must be provided with  
23 separate counsel.

24 Minors’ counsel cannot provide this Court with any more detailed information about the factual  
25 basis for the conflict, without breaching her ethical duty not to reveal confidential information. The  
26 Court of Appeals addressed exactly this situation in *Aceves v. Superior Court (1996), 51 Cal.App.4<sup>th</sup>*  
27 *584:*  
28

1 Where as here the duty not to reveal confidences prevented counsel from further  
2 disclosure and the court accepted the good faith of counsel's representation, the court  
3 should find the conflict sufficiently established and permit withdrawal.

4 *Id.*, 51 Cal.App.4<sup>th</sup> at 592. The trial court should not require "disclosure of communications that are  
5 confidential but form the factual basis of the conflict," *id.*, but should "accept counsel's representations  
6 as an officer of the court regarding a conflict of interests." *Id.*, at 594-594. Under *Aceves*, the  
7 representations contained in the accompanying Declaration of XXXX are a sufficient basis for this Court  
8 to find that there is an actual conflict of interest; allow M to withdraw; and appoint separate counsel for  
9 the minors J. and K.  
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### 12 CONCLUSION

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14 For all of the foregoing reasons, the moving party respectfully requests that the court relieve  
15 attorney M as attorney of record for the minors J. and K.  
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20 DATED: February , 2006

LAW OFFICES OF XXXXXX  
Respectfully submitted,

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23 By \_\_\_\_\_  
24 XXXX  
Moving Party  
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**DECLARATION OF M**

I, M, declare as follows:

1. I have personal knowledge of the following facts, and if called as a witness I could and would competently testify thereto.
2. I am currently assigned to Department XXX of the Superior Court.
3. I am requesting to be relieved as counsel of record for the minors J. and K. (Minor A. is represented by separate counsel.) .
4. Since April of 1998, I have represented minors J. and K. in the above-entitled matter.
5. In the course of my representation of J. and A., I have had numerous conversations with both minors, including exchanges of confidential information.
6. During the course of my representation of J. and K., from time to time I have requested than an investigator visit and interview the minors, and report to me concerning the minors' circumstances and interests.
7. In January 2006, the investigator informed me of a confidential communication concerning an alleged incident involving the minors J. and K. that occurred during a Christmas visit at the XXXX foster home, where J. resides.
8. The nature of the alleged incident is such that, if it occurred as reported, it might preclude placement of both minors in the same home in the future.
9. Minor J. has stated that he wishes to remain in his current placement, in the XXXX foster home.
10. Minor K. has stated that she may eventually want to move from her group home where to the XXXX foster home where J. is placed.
11. Minors J. and K. currently have sibling visits twice per month. Both minors have stated that they enjoy these visits and want the visits to continue.
12. The Department of Children and Family Services' current plan for the minors J. and K. is for J. to remain in the XXXX foster home, and for K. to be moved to a group home closer to the XXXX's residence as soon as this group home has an opening available.

1 13. For the foregoing reasons, I believe that there is an actual and present conflict of interest between  
2 the minors J. and K.

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4 I declare under penalty of perjury that the foregoing is true and correct and is of my own  
5 personal knowledge. Executed this \_\_\_\_\_ day of \_\_\_\_\_ at X, California.

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8 M  
9 Declarant  
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