DRAFT EDUCATIONAL SAMPLE MOTION SIBLING VISITATION

Disclaimer: The following material provides a sample motion for educational purposes. This is used in trainings and to assist people brainstorming what a motion for sibling connections could look like. This draft was developed between 2023 and 2026 through a collaborative effort of pro bono attorneys, advocates, and individuals with lived experience as part of the National Network of Fostering Sibling Connections. While efforts have been made to ensure accuracy, laws, regulations, and policies may change, there can be mistakes, and this SAMPLE MOTION may not reflect the most current legal developments or the full scope of applicable law. This information is provided for educational and informational purposes only and is not intended to serve as legal advice, nor does it create an attorney-client relationship. The material should not be relied upon as a substitute for obtaining legal advice from a qualified attorney regarding a specific situation. Individuals seeking guidance about their rights or obligations should consult a licensed attorney or appropriate legal professional in their jurisdiction. If you have updated information, or would like to submit changes please join our efforts and email cathy.krebs@americanbar.org.

Directions and Explanation: *This template motion seeks an order of frequent sibling visitation and other contact for siblings who are separated in foster care. While the model focuses on visitation while in foster placements, with some edits it can be used to obtain an order for sibling visitation when some siblings are in a guardianship or other custodial arrangement.*

Before you submit this motion, you should make sure that the agency has presented concrete facts that show that joint placement presents a safety or well being issue for the children. If that is not the case, consider using the template motion for joint placement, which you can find here.

The moving parties in this model are the separated siblings themselves. You can file a motion for sibling joint placement even if you only represent one sibling, but, ideally, all siblings would be joint movants or otherwise clearly supporting the motion. In some states, you may be able to file a motion like this if you represent the parent.

If you have determined that a motion for visitation is appropriate, use this template and do the following: (1) include your own facts and (2) add any supporting state law related to sibling placement and permanency.

(1) The ideal facts would include that the siblings had lived together prior to placement, have a close relationship, ask for each other, and exhibit some signs of wanting to visit and have contact with one another. But don't worry if you don't have all of these good facts. The law supports the sibling relationship even without perfect facts.

- *Under Federal Law, the agency must arrange for sibling visits unless the agency can prove that doing so would be harmful to one or more of the children. While it is helpful for the court to hear why it would be in the children's best interest to have contact, the law presumes that it would be in the children's best interest so*

you do not have to convince the court that it is. Rather, if the agency does not want to facilitate visits, the burden is on the agency to prove that it would be harmful.for the children to have contact

(2) *This model motion has content regarding federal law and research showing that siblings are best served by frequent visitation if joint placement is not possible due to safety reasons. It is important that you add your governing state statutes, case law, and/or agency regulations on sibling visitation.*

This model motion is provided for your information only and should not be considered legal advice.]

IMPOUNDED

[*State trial court, county, etc.*]
Docket No. _____

In Re:	)
[*Care and Protection/Matter*] of	)
Smith Children	)
	)

MOTION TO ORDER [*STATE AGENCY*] TO FACILITATE <u>SIBLING VISITS AND OTHER CONTACT</u>

[Sarah Smith and John Smith], the children in this matter ("Children"), are in [*state agency's*] legal custody, are placed in separate foster homes, and currently only see each other [_____]. The Children move that this Court order [*state agency*] to arrange for frequent visitation, including transportation, and to facilitate the telephonic and text communications as detailed below. The Children [*lived together before placement*] and constantly tell [*the foster parents/the undersigned counsel*] that they wish to see each other and communicate more often. They should not have to suffer the deterioration of their relationship because [*state agency*] filed the underlying petition and cannot place them together at this time due to safety issues. Sibling visitation is required by federal law and [*governing state statute/case law/regulation*], and is also in the Children's best interests. Further, the most current developmental research about sibling visitation and contact clearly shows that siblings' best interests and needs are served, and the trauma of removal from home is mediated, by frequent sibling visitation.

<u>Background</u>

[Insert your succinct procedural history and facts here. Include (1) facts that show (to the extent possible) that the siblings lived together pre-removal, have a relationship, ask for each other,

enjoy/benefit from contact with each other, and may be suffering due to the lack of contact; and (2)that the agency has ignored your requests or refuses to facilitate visits or other contact.]

Discussion

I. The Children should have regular and frequent sibling visits because it is required by state law *[state statute/regulation/case]* and because it serves their best interests.

[Insert your governing state statutes/cases/regulations on sibling visitation here. Cite to your state case law on sibling visitation and best interests and explain why sibling visitation is in the youth's best interest.]

II. Federal law requires sibling visitation and the protection of the sibling connection in foster care.

Recognizing the importance of sibling connections, federal law prioritizes the placement of children in foster care together with their siblings. The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351 provides that in order to receive federal funding, the agency must make reasonable efforts "to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings." 42 U.S.C.A. § 671 (31)(A). To help ensure that siblings are placed together, federal law allows the number of foster children in one home to exceed the usual limitation in order to accommodate sibling groups. 42 U.S.C.A. § 672 (c)(1)(B)(ii). The exception to the obligation to place siblings together is narrow and cannot be based on convenience: if joint placement cannot be made,"the agency must document the reasons that it is contrary to the safety or well-being of the siblings." Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, ACYF-CB-PI-10-11, page 22 (July 9, 2010).

If the agency is able to document specific reasons as to why it is contrary to the welfare of the children's safety or well-being to be placed jointly, the agency must still ensure that the

children maintain regular contact. For children who are not placed together, federal law requires that the agency "provide for frequent visitation or other ongoing interaction between the siblings, unless the State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings." 42 U.S.C.A. § 671 (31)(B). Visitation should occur as frequently as possible. Federal guidance states that "frequently means at least monthly." Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, ACYF-CB-PI-10-11, page 22 (July 9, 2010). In order to facilitate regular visitation, the agency may claim as an allowable administrative cost the cost of transporting siblings removed from their home and not jointly placed (regardless of whether these siblings are in foster care, guardianship or adopted) to sibling visits and can also claim incidental costs associated with such visits, such as the costs of the siblings meals during such visits. ACF-CB-PI-10-11 (July 9, 2010) https://acf.gov/sites/default/files/documents/cb/pi1011.pdf

Arranging for frequent sibling visitation is also consistent with the agency's obligation to make reasonable efforts to finalize the youth's permanency plan. Maintaining sibling connections increases the odds that children will reunify and decreases the time to the achievement of permanency. *See* Jeffrey D. Waid, Investigating the Impact of Sibling Foster Care on Placement Stability (2015) (Dissertation, Portland State University) (Sibling co-placement reduces the likelihood of foster care placement changes and increases the likelihood of reunification) and also Adam McCormick, Siblings in Foster Care: An Overview of Research, Policy, and Practice, 4 J. of Pub. Child Welfare 198 (2010) ("[c]hildren who are placed alone either with a history of placement with siblings or with a history of placement alone, are significantly less likely to be adopted or placed in a subsidized guardianship home, than children who are placed with a consistent number of siblings in all of their placements."). In addition, the sibling connection,

which is fostered by visitation, supports the achievement of relational permanency, which consists of the "important long-term relationships that help a child or young person feel loved and connected.." What is Permanence? Annie E. Casey Foundation Blog Post, (May 21, 2023), https://www.aecf.org/blog/what-is-permanence. While making long-term relationships are important for the emotional health and stability of all young people, they are particularly important for youth who may not be reunified with their parents. For these youth, maintaining connections with their siblings can help foster a greater understanding of their past history, and a deeper connection to their biological family can serve as an important source of support when they exit foster care, and can, as such, help to ensure the success of the young person's transition out of foster care.

Accordingly, under federal law and public policy, unless the agency can demonstrate that visitation would be contrary to the safety or well-being of the children, the agency must arrange for sibling contact.

In this case, the agency has made no showing that visitation would be contrary to the safety or well-being of the children. And, even if it could be shown that some forms of visitation might be contrary to their safety or well-being - such as unsupervised in-person visits - there are many other ways in which contact can be arranged that would not pose those same risks, including, for example, visits supervised by the agency or a foster parent, and telephone or virtual contact.

III. Social science research and practice models show that sibling visitation for youth in foster care serves their best interest and supports healthy childhood development.

Laws requiring the agency to facilitate sibling contact are grounded in social science and child development research. Studies show that regular and frequent sibling visitation reduces

foster children's trauma after removal from home, improves children's mental health, and improves other long-term outcomes.

A. Maintaining sibling connections through visitation in foster care reduces trauma and benefits children's mental health.

Being separated from their siblings can have a profound impact on the emotional well-being of children who are placed in foster care. Separating siblings can exacerbate the trauma experienced by children who are removed from their homes. *See* Adam McCormick, *Siblings in Foster Care: An Overview of Research, Policy, and Practice*, 4 J. of Pub. Child Welfare 198, 207 (2010) ("Separating siblings who have been removed from their parents only seems to intensify the pain, grief, and trauma that they have already experienced when they were initially removed from their parents."); Deborah Silverstein & Susan Livingston Smith, *Siblings in Adoption and Foster Care: Traumatic Separations and Honored Connections*, 20 (2008) (noting that foster youth describe separation from siblings as being "like an extra punishment, a separate loss, and another pain that is not needed."). Siblings who are separated in foster care and denied contact do not easily recover from the disruption of that relationship. William Patton & Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings' Association Rights*, 48 U. Miami L. Rev. 744 (1994) ("Siblings provide a family subsystem which lasts a lifetime, often for 60 to 80 years, and grieving over a lost sibling may be lifelong."). Indeed, the loss of the sibling relationship can be even more traumatic than the disruption of the parent/child relationship. *See* William Patton & Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings' Association Rights*, 48 U. Miami L. Rev. 744 (1994), at 780 (noting that, after leaving the foster care system, siblings deprived of frequent visitation more often search for their biological siblings than for their biological parents).

To mediate this trauma, the state must ensure that separated siblings have frequent visitation and contact. *See* Mass. Dep't of Child. & Fam., *Sibling Bill of Rights* (2012) ("[S]ibling separation is a significant and distinct loss that must be repaired by frequent and regular contact."); Family Futures Practice Paper Series, *Assessing Sibling Placements* (2019) (when sibling separation in foster care cannot be avoided, "maintaining reasonable levels of contact is essential for the future mental health and wellbeing of the child."). While sibling joint placement is almost always preferable, visitation that allows for the opportunity "to connect in a meaningful way . . . ha[s] many of the same benefits of sibling placement together: less trauma and loss, greater feelings of belonging, and shared history." National Center for Child Welfare Excellence (NCCWE), Practice Component No. 6, *Sibling Visits and Contacts*.

Visits for siblings separated in care are essential for their mental health. *See* Armeda Wojciak, et al., *Sibling Relationship in Foster Care: Foster Parent Perspective*. 39(9) J. of Family Issues 2590 (2018) (finding that foster parents overwhelmingly urged greater sibling contact because anxiety and negative behaviors arose when sibling relationships were not maintained). Maintaining sibling connections in care improves children's sense of self-esteem and self-identity. *See* e.g., Mary A. Herrick & Wendy Piccus, *Sibling Connections: The Importance of Nurturing Sibling Bonds in the Foster Care System*, 27 Child. & Youth Srvcs. Rev. 845, 852 (2005)").

These Children should not have to yearn for each other's company or search for each other later in life; they should have regular and frequent contact *now* and throughout their stay in care.

B. Maintaining sibling connections through visitation and other contact in foster care has long-term benefits for children.

The benefits of ongoing sibling contact during care extend beyond childhood. *See* e.g., Christine M. Helfrich et al., *Sibling Relationships and Internalizing Symptoms of Youth in Foster Care*, 35 Child. & Youth Srvcs. Rev. 1071 (2013) (finding that maintenance of sibling relationships may offset some of the negative outcomes for youth who age out of care, including housing instability). Greater access to siblings while in care results in higher levels of social support, self-esteem, and income as adults. *See* Child Welfare Information Gateway, *Sibling Issues in Foster Care and Adoption* (2019), U.S. Dep't of Health & Human Services, Admin. for Child. & Fam., Children's Bureau, at 2 (finding that benefits of sibling support can extend past the time children exit the foster care system and can include "emotional and spiritual support, guidance about college or other opportunities, assistance required due to physical and developmental disabilities, and information about health concerns or history."); Laurie Kramer, et al., Siblings, Ch. 29, in B. H. Fiese, ed., APA Handbook of Contemporary Family Psychology (2019)(internal citations omitted)(emphasis added)(describing the growing literature that shows that maintaining sibling relationships through joint placement or other means can provide many developmental benefits, including greater competence in education, occupation, housing, relationships, and civic engagement and that "sibling relationship qualities, such as support, positively predicted aspects of self concept including acceptance, self-efficacy, psychological maturity, and activity, *with the amount of contact with siblings magnifying the strength of these associations*.")

[*If relevant to your case*.] Finally – and significantly – the maintenance of sibling relationships may be even more important for children within marginalized communities where such relationships provide racial, ethnic, and cultural connections. *See* Jonathan Caspi, *Sibling Development: Implications for Mental Health Practitioners* 322 (Springer Pub. 2011) (after

removal from parents, "[s]ibling relations may be of special importance to children from minority populations in preserving their ethnic identity, particularly children placed in families or communities that differ considerably from their own heritage."). Maintaining a strong sibling relationship is vital in ensuring that the Children here maintain connections to their community.

Conclusion

The Children in this case should have regular and frequent visitation and other contact because Federal and state law requires that the Children in this case have regular and frequent visitation and contact. That law is rooted in the vast body of social science and child development research demonstrating that frequent and regular sibling visitation is in the children's best interest. If [*state agency*] is allowed to erode the Children's sibling relationship, the Children will unnecessarily suffer additional trauma, reduced chances of achieving permanency, and long-term adverse mental and behavioral health. Because the agency has made no showing that contact would be harmful to them, visits must be arranged.

WHEREFORE, the Children request that this Court order:

(a) that [*state agency*] arrange in person visitation to occur at least X times a month and provide transportation to and from visits [Federal law says visits should be a minimum of once a month so that should be the minimum; you may want to argue for more frequent visits, especially if statute, regulation or agency guidance in your area calls for more frequent visits];

(b) that [state agency] develop a plan with the children and their caregivers to allow for phone contacts at least _____ per week and _____ contact via text.

(c) that [state agency] will provide a report to the court detailing the visitation and communication plan by _____.

(d) Such other and further relief as is just and proper.

Dated: _____, 2025

Sarah and John Smith (the Children)
By their counsel,
[Attorney information]