PRACTICE ADVISORY[1]

SEEKING PREDICATE FINDINGS IN NEBRASKA FOR SPECIAL IMMIGRANT JUVENILES

by Shane Ellison and Kevin Ruser[2]

May 28, 2018

Introduction:

On April 23, 2018, Governor Pete Ricketts signed LB 670,[3] a bill which contains several important provisions related to individuals seeking Special Immigrant Juvenile (SIJ)[4] predicate findings before Nebraska state courts. The relevant sections of LB 670 discussed below originated from LB 826,[5] a bill introduced by Senator Tony Vargas. This Practice Advisory analyzes the importance of the new law for Nebraska practitioners and offers tips for seeking these findings for eligible juvenile clients.

What LB 670 Does:

LB 670 amends NEB. REV. STAT. § 43-1238(b) (Nebraska's version of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA")) to read as follows:

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[1] This advisory is intended for lawyers and is not a substitute for independent legal advice provided by a lawyer familiar with a client's case. Counsel should independently confirm whether the law has changed since the date of this advisory.

[2] We are grateful to Mindy Rush-Chipman, Anna Deal, Roxana Cortés Reyes, Dorian Rojas, and Joseph Weiner for their review and helpful feedback in crafting this practice advisory.

[3] *See* https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=34197.

[4] Federal law provides that a child—for whom a state or juvenile court finds (1) that reunification with one or both of the child's parents is not viable (2) due to abuse, abandonment, neglect, or similar basis under state law, and (3) that it would not be in the best interest of the child to be returned to his or her country of nationality—may be eligible for special immigrant juvenile status. 8 U.S.C. § 1101(a)(27)(J). Federal regulations clarify that the term "juvenile court… means a court located in the United States having jurisdiction under State law to make *judicial determinations about the custody and care of juveniles*." *See* 8 C.F.R. § 204.11(a) (emphasis added). While an order with the above factual findings is a necessary condition to seek SIJ relief, such an order does not guarantee an immigration benefit. Rather, juveniles with such court orders must file a Form I-360 Petition and undergo screening before the Petition can be approved. Then, once the I-360 Petition is granted, most youth will need to wait in line until a visa is available. Only then may the child file the Form I-485, Adjustment of Status application to seek classification as a lawful permanent resident. *See* INA §§ 245(a), (h). Yet, before permanent residence may be granted, there are biometrics screenings, background checks, and potentially a final interview with a federal officer to confirm eligibility and ensure the child is admissible to the U.S. under federal law. *See* INA § 245(h)(2); *see also* https://www.uscis.gov/policymanual/ HTML/PolicyManual-Volume6-PartJ.html. The SIJ immigration process routinely takes several years to complete, depending on the youth's country of origin. *See* https://www.uscis.gov/green-card/sij.

[5] *See* https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=34501.

> (b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state. *In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has* ***jurisdiction and authority to make factual findings*** *regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with* ***at least one of the child's parents*** *due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such factual findings,* ***the court shall issue*** *an order containing such findings* ***when requested*** *by one of the parties* ***or upon the court's own motion***. *Id.* (emphasis added).

The italicized portion above is the language added to NEB. REV. STAT. § 43-1238(b) by LB 670. Given the scope of Nebraska's UCCJEA, this language applies in any situation in which the custody of a child is at issue in the case. As defined by NEB. REV. STAT. § 43-1227(4), such proceedings include those for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence.

There are at least four important aspects to LB 670 that will aid practitioners in obtaining SIJ predicate findings. First, the bill unequivocally affirms that state court judges—with jurisdiction over the custody of a child in one of the above proceedings—have the jurisdiction and authority to make SIJ predicate findings. Second, the bill authorizes a party to the proceeding to request that SIJ predicate findings be made; and the bill authorizes state courts to "issue [*sua sponte*] any order containing such findings." Third, where "there is sufficient evidence" to support the SIJ predicate findings, the state court judge is required to make those findings. Finally, the bill's language (i.e., "at least one parent") abrogates one of the holdings of *In re Erick M.*,[6] that construed the term "1 or both" parents in the SIJ statute to mean that an applicant must prove the nonviability of reunification with both parents.[7]

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[6] 284 Neb. 340, 820 N.W.2d 639 (2012).

[7] *In re Erick M.*'s poor statutory construction analysis of the term "1 or both" had been roundly criticized across the country and rejected by United States Citizenship and Immigration Services ("USCIS"). *See e.g. In re Israel O.*, 233 Cal. App. 4th 279, 290 (Cal. App 1st Dist. 2015) ("[T]here appears little doubt that USCIS currently interprets and applies *section 1101(a)(27)(J)* to include" one-parent SIJ petitions); *In re Estate of Nina L. ex rel. Howerton*, 41 N.E.3d 930, 937 (Ill. App. 1st Dist. 2015) ("*Erick M.* … misunderstood the role of state courts in making SIJ findings"); *Marcelina M.-G. v. Israel S.*, 112 A.D.3d 100, 113 (N.Y. App. Div. 2d Dep't 2013) (noting that "in refusing to make SIJ findings where one parent was present, the Nebraska court blurred the federal and state roles under the SIJ statute," which "has the troubling effect of precluding the USCIS from applying its interpretation of the federal statute"). Additionally, *Erick M.*'s determination to even reach the issue of the meaning of a federal statute was inappropriate, given that USCIS is the body entrusted with interpreting and applying the meaning of the SIJ statute. As such, it became standard practice in Nebraska to pursue 1-parent SIJ findings through custody determinations where the practitioner simply abstained from asking the court to interpret the SIJ statute, given *Erick M.*'s existing construction of that term. USCIS routinely granted such 1-parent SIJ petitions, thereby rebuffing *Erick M.*'s interpretation. Thus, while *Erick M.*'s holding in relation to the "1 or both parents" language was effectively rendered superfluous, LB 670 clarifies that the nonviability of reunification need only be shown with regard to one parent.

Legislative History:

The stated intent of the SIJ-related portion of LB 670 was to "reinforce existing state law that grants state court judges the jurisdiction and authority to make factual findings regarding abused, abandoned, and/or neglected children in the context of findings related to the best interest of the child."[8] The bill accomplished this by "requir[ing] judges to make these findings where there is sufficient evidence presented."[9]

Because one of the main purposes of the bill was to clarify and reaffirm that Nebraska State court judges have the jurisdiction and authority to make SIJ predicate findings,[10] in that respect, the bill

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[8] Introducer's Statement of Intent, available at https://nebraskalegislature.gov/FloorDocs/105/PDF/SI/LB826.pdf.
[9] *Id.*
[10] Pre-existing jurisdictional authority for the court to make findings of fact regarding the best interest of abused, abandoned and/or neglected children can be found in:

-NEB. REV. STAT. § 43-1238(a)("A court of this state has jurisdiction to make an initial custody determination if . . . this state is the home state of the child . . . and . . . evidence is available in this state concerning the child's care, protection, training, and personal relationships"); NEB. REV. STAT. § 43-1227(4)(providing that a "[c]hild custody proceeding … includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence.");

-NEB. REV. STAT. § 42-351(1)("In proceedings under sections 42-347 to 42-381, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgements and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, *the custody and support of minor children*, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorney's fees. The court shall determine jurisdiction for child custody proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act")(emphasis added); *see also Bartlett v. Bartlett*, 193 Neb. 76, 193 Neb. 76, 225 N.W.2d 413 (1975)(the court in a divorce proceeding or modification has jurisdiction to make specific findings of fact regarding the best interest of the minor children whose custody is at issue); *Daniels v. Maldonado-Morin*, 288 Neb. 240, 847 N.W.2d 79 (2014)(found that a district court has jurisdiction to find whether or not it is in a child's best interest to be placed in a foreign country);

-NEB. REV. STAT. § 43-2923 ("in determining custody and parenting arrangements, the court *shall* consider the best interests of the minor child, which *shall* include, but not be limited to, consideration of the foregoing factors (a) The relationship of the minor child to each parent . . . (b) The desires and wishes of the minor child . . . (c) The general health, welfare, and social behavior of the minor child . . . (d) Credible evidence of abuse inflicted on any family or household member . . . (e) Credible evidence of child abuse or neglect")(emphasis added); *see also State ex rel. Amanda M. v. Justin T.*, 279 Neb. 273, 777 N.W.2d 565 (2010)(after determining the Parenting Act controls, the court stated it is "preferable" to make a specific findings of fact regarding the best interest of the child).

-NEB. REV. STAT. § 30-2610 (providing that a "court may appoint …[a] guardian" where it is "in the best interests of the minor"); *see In re Jaime G.*, 2017 2017 Neb. App. LEXIS 184 (Sept. 26, 2017)(discussing, in the context of a guardianship decision, the sufficiency of evidence necessary to make factual findings regarding a child's previous abuse, abandonment, and/or neglect; reunification with the child's parent(s), or return to the child's home country); *see also In re Guardianship of Heather L.*, 2004 Neb. App. LEXIS 254 (Sept. 28, 2004)(holding "[t]he *best interests of the children must always be considered* in determining matters of child custody")(emphasis added);

-NEB. REV. STAT. § 43-246 (It is "the responsibility of the juvenile court . . . [t]o assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest . . . and . . . to make any temporary placement of a juvenile in the least restrictive environment consistent with the best interest of the juvenile . . ."); NEB. REV. STAT. § 43-3806 (outlining the requirement to "assist … in obtaining" documentation for minors who are "eligible for special immigrant juvenile status"); *see State v. Luis G.*, 17 Neb. App. 377, 764 N.W.2d 648 (2009)(holding that that juvenile courts in Nebraska have the jurisdiction and authority to issue orders related to

did not create anything new.[11] However, this proposal was needed because some Nebraska State courts had refused to make these factual findings.[12] For any child eligible to seek SIJ classification, obtaining such predicate findings is a necessary first step in that process.[13] Thus, the refusal by Nebraska state courts to make such findings foreclosed SIJ relief for eligible youth. The clear legislative intent of this portion of LB 670 was to prevent state courts from denying eligible youth the ability to obtain SIJ predicate findings where sufficient evidence supports such findings.[14]

When To File:

The ideal situation for Nebraska practitioners is to wait if possible to file state court cases seeking SIJ predicate findings until July 18, 2018. Because the statutory amendments unquestionably apply to all state court cases filed on or after July 18, there is no question that they will govern those cases.

If, however, it is necessary to file a state court case before July 18, then it is important to analyze the principles of law regarding prospective vs. retroactive application of amended statutes. As a general proposition, amendments that are "substantive" (i.e., those that create a right or remedy that did not previously exist and which, but for the creation of the substantive right, would not entitle one to recover) apply only *prospectively* to cases, unless the Legislature has clearly indicated they should apply retroactively.[15] On the other hand, "procedural" amendments (i.e., those that simply affect the method by which an already existing right is exercised) apply to cases that were filed before the effective date of the amendments, and are pending as of the amendments' effective date.[16]

So how does this work in practice? Let's take an example of a guardianship case that is filed before July 18. If the amendments made by LB 670 are considered substantive in nature, then they

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whether a child has been abused, abandoned, or neglected, and whether it would be in the child's best interest to be returned to his or her country of nationality).

[11] While the bill's language does abrogate *Erick M.'s* holding requiring the nonviability of reunification with *both* parents, it reaffirms *Erick M.'s* central holding that juvenile courts have the jurisdiction and authority to make SIJ predicate findings of fact. *In re Erick M.*, 284 Neb. 340 (2012); *accord State v. Luis G.*, 17 Neb. App. 377 (2009). The bill simply confirms that that the central holding of *Erick M.* and *Luis G.* applies in *any* Nebraska State court that has jurisdiction to make judicial determinations about the custody and care of juveniles.

[12] Some county and district court judges had suggested that they lacked the authority or jurisdiction to make such factual findings because they were not "juvenile" courts. Others asserted that they would not make those findings because they were not required to do so. Still others had errantly believed that issuing such findings was tantamount to granting an immigration benefit. Such objections were always misplaced, but to the extent there was any doubt, LB 670 laid those concerns to rest.

[13] *See e.g., In re Erick M.*, 284 Neb. at 341-42 ("The court's findings in an 'eligibility order' are a prerequisite to SIJ status"); *State v. Luis G.*, 17 Neb. App. 377 (2009); NEB. REV. STAT. § 43-3806 (discussing the requirement to "assist … in obtaining" documentation for minors who are "eligible for special immigrant juvenile status").

[14] *See* LB826-Judiciary-testimony-2-2-18.pdf.

[15] There is no indication in LB 670 that the amendments in question were intended to apply retroactively.

[16] *Kratchovil v. Motor Club Ins. Ass'n*, 255 Neb. 977, 982, 588 N.W. 2d 565, 572 (1999); *Beherns v. American Stores Packing Co.*, 228 Neb. 18, 25 421 N.W.2d 12, 17 (1988); *Allen v. IBP, Inc.*, 219 Neb. 424, 430, 363 N.W.2d 520, 525 (1985).

would not apply to any case finally decided before July 18 and it must simply be argued that existing statutes and case law authorize and empower a court to make predicate findings. However, there is an excellent argument, bolstered by the legislative history of LB 826 (which later became section 8 of LB 670), that these amendments apply to cases filed prior to their effective date because they did not "create a right or remedy that did not previously exist and which, but for the creation of the substantive right, would not entitle one to recover."[17] All the legislative history indicates that LB 826 was simply intended to clarify already-existing law in Nebraska.[18] If that argument prevails (and we believe it should), then even a case filed before July 18 could take advantage of the amendments, so long as it remains pending (including during any appeals) on July 18.[19] But there is another way to hedge one's bets on this issue. If it is necessary to file before July 18, practitioners should consider delaying a request to the state court to make the SIJ predicate findings until July 18 or later. Assuming that the amendments are procedural in nature, there should be no question that they would apply to factual findings made on or after July 18. Failing that, practitioners should try to delay bringing the state court action to a conclusion before July 18, even if unable to delay having the predicate findings entered until then. Case law supports the argument that procedural amendments apply to a pending case until it is *finally* decided.[20]

What To File:

Practitioners should include in their pleadings a reference to the amended statute, NEB. REV. STAT. § 43-1238(b) (along with any other relevant jurisdictional statutes),[21] to inform state court judges of their authority and obligation to make these special findings of fact. This also functions to notify the court that the party is requesting these factual findings as authorized by the amended NEB. REV. STAT. § 43-1238(b). A sample guardianship petition is provided in the appendix to this practice advisory.[22]

Additionally, practitioners should include in their proposed order a reference to the amended statute, NEB. REV. STAT. § 43-1238(b). Since the Nebraska Supreme Court requires that

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[17] *See supra* Legislative History at page 3; *see also* LB826-Judiciary-testimony-2-2-18.pdf.
[18] *Id*.
[19] *Allen v. IBP, Inc.*, 219 Neb. at 430, 363 N.W.2d at 525.
[20] *Id*. The specific issue in *Allen* was whether an amendment to an attorney's fee statute in a workers compensation action should apply to a cause of action that accrued and was filed before the effective date of the statute. (The amendments allowed an award of attorney's fees, whereas prior law did not.) The Nebraska Supreme Court analyzed this as a "procedural" amendment and held "'[T]he recovery of costs is governed by the statute in force at the time the right to have them taxed accrued. In other words, *the right to costs depends upon the statutes in force at the termination of the action*, and not upon those in force when it was commenced.' . . . The conclusion is that the statute in force when attorney's fees are properly and *timely allowed and taxed* in the district and supreme courts controls, and not the statute in force when proceedings are commenced before the compensation commissioner or the compensation court." (Emphasis in the original.) *See also, Solomon v. A.W. Farney, Inc.*, 136 Neb. 338, 348, 286 N.W. 254, 260 (1939).
[21] *See supra* note 10. USCIS is scrutinizing state court orders very carefully, and questioning both (1) the basis for the state court's jurisdiction and (2) whether the state court has the power to make custody determinations in general. As such, practitioners should include as much information as possible regarding the bases in state law for the court exercising jurisdiction in the first place, and then clearly state that the court has the ability to make custody determinations and/or place a child back in his or her parent's custody, if applicable.
[22] *See infra* page 8.

practitioners use only the official guardianship forms promulgated by the Court,[23] we presume the current Order Appointing Guardian For A Minor form[24] will be amended by the Court in the near future. Until then, practitioners should insist on the County Court including a reference to NEB. REV. STAT. § 43-1238(b) in the Order provisions relating to the request to make the SIJ findings. If the court indicates a reticence to issue the SIJ findings, the authors of this practice advisory have prepared a motion/brief that can be provided upon request.

General Tips and Best Practices:

In addition to making use of the foregoing statutory amendments, practitioners should also bear in mind general best practices when pursuing SIJ predicate orders in Nebraska.

- Given some of the Nebraska judicial recalcitrance in issuing predicate orders in the past, attorneys should be sure to put forth sufficient evidence to support factual findings related to (1) abuse, abandonment, and/or neglect, (2) the viability of parental reunification, and (3) the best interest of the child with respect to a return to their country of nationality. Such evidence could include affidavits, police reports, medical records, dispositions of criminal convictions, and country-specific human rights reports or news articles. Such documentation could not only prove important in the Nebraska state court proceeding, but it could also be useful later in the proceedings before USCIS.

- Attorneys should also ensure the judge in the state court proceeding is informed of why the guardianship or custody order is needed in addition to obtaining predicate factual findings. Any minor, regardless of how close they are to becoming an adult, could find themselves in need of a guardian to make legal, medical, or other weighty decisions on their behalf. As such, it is prudent to establish a guardianship for the minor even when the minor is close to reaching the age of majority. If the case at issue is not a guardianship, but instead a different type of custody case (i.e., one arising in the context of a divorce, legal separation, or paternity action), then attorneys should develop the evidence as to why it is necessary for the court to enter a custody order. For example, if the abusive, neglectful and/or abandoning parent has made threats to take physical custody from the parent requesting custody, be certain to develop that evidence.

- Relatedly, attorneys should carefully select the best state procedural vehicle for pursing an SIJ predicate order. Thus, if a child has one parent capable of adequately caring for him or her, it is not appropriate to pursue a guardianship petition, as the parent is the natural guardian of the child and fit to provide continued care and custody.[25] If the child has been abused, abandoned, or neglected by the other parent, attorneys should evaluate whether a custody order (in a paternity or divorce context) would be appropriate.

[23] *See* Uniform County Court Rule § 6-1445(B).
[24] Nebraska State Court Form, CC 16:2.1.1.
[25] *See* NEB. REV. STAT. § 30-2608(a).

- Attorneys should not request Nebraska state court judges to weigh in on the meaning of the federal SIJ statute generally, or eligibility for SIJ specifically. Such matters are properly left to USCIS and related federal authorities.[26] It is not appropriate for state court judges to consider matters outside of the substantive requirements of the remedy being sought (e.g., guardianship, custody, divorce, etc.) and the factual findings requested.

- When submitting a proposed order, Attorneys should not use boilerplate language lifted directly from the SIJ statute. Thus, if the evidence supports a finding of only abandonment, for example, attorneys should not reference abuse and neglect in the proposed order. Relatedly, attorneys also should include specific facts in the proposed order that support that finding of abandonment. Likewise, the proposed order should give some factual foundation for why it is not in the child's best interest to be returned to their country of nationality.

- It is critically important to include state statutes and/or case law in support of each of the elements of an SIJ predicate order—the court's jurisdiction; abuse, abandonment, or neglect; and why it is in the child's best interest not to be returned to his or her country of origin—along with facts from the case itself that fit into those statutory or case law citations. Attorneys should also always include the name(s) of the offending parent(s) on the face of the SIJ predicate order.

- Lastly, attorneys should not file an action, a guardianship proceeding for example, to obtain the SIJ predicate findings, and fail to follow through with all of the substantive requirements for obtaining the final letters of guardianship. Attorneys should diligently comply with all of the state requirements for completing the guardianship case.

For additional information related to litigating cases involving SIJ predicate orders, visit the link below to view amicus briefs describing preexisting state law authority to issue factual findings on such matters[27] and for a detailed explanation of the SIJ process. [28]

[26] *In re Erick M.*, 284 Neb. 340, 341-42 (2012)("The court's findings in an 'eligibility order' … are not binding on federal authorities' discretion whether to grant a petition for SIJ status"); *see also Keller v. City of Fremont*, 719 F.3d 931, 939 (8th Cir. 2013) (explaining that "the federal government 'has broad, undoubted power over the subject of immigration and the status of aliens,'" and that where there is a "pervasive[] … federal regulatory regime" there must be "exclusive [federal] governance."), citing *Arizona v. U.S.*, 567 U.S. 387, 399-400 (2012).

[27] *See* Amicus-Brief-of-UNL-Clinical-Law-Program-and-Nebraska-Appleseed.pdf.

[28] *See* Amended-ILC.AmicusBrief.Carlos-Ortiz.4.16.18-FINALto-share.pdf.

IN THE COUNTY COURT OF [COUNTY OF VENUE] COUNTY, NEBRASKA

IN THE MATTER OF THE GUARDIANSHIP OF	)	Case No. _____
[Name of Minor Child],	)	VERIFIED PETITION FOR APPOINTMENT OF GUARDIAN FOR A MINOR
A Minor Child.	)	

[Name of Petitioner], Petitioner herein, by and through [his/her] attorneys of record, hereby petitions the Court for full guardianship of [name of minor child], a minor child residing in [county of venue] County, Nebraska. In support of [his/her] Petition, Petitioner states:

1. Petitioner, as current physical custodian of [name of child], a minor child, is an interested party in these proceedings.
2. [Name of child], for whom a guardian is sought, is a minor child born in [year of birth], and the appointment of a guardian is necessary and desirable as a means of providing continued care and supervision of [name of child]. A full guardianship is needed in this case.
3. The welfare and best interests of [name of child] require the appointment of a guardian, which is necessary or desirable as a means of providing continuing care and supervision of the minor child.
4. All parental rights of custody of [minor child's] biological parents have been suspended by prior and current circumstances. Specifically, [include here some specific allegations that support the assertion that the child has been abused, neglected and/or abandoned by at least one of his parents, the type of hardship the

Commented [KR1]: Be sure to choose the proper county for venue, as specified by Neb. Rev. Stat. § 30-2609.

Commented [KR2]: Only years of birth should be included in publicly available documents. Nebraska Uniform County Court Rule § 6-1464 prohibits the disclosure of personal information in civil court records. If you wish to report the child's full birth date to the court, you must do so on Appendix 7, as prescribed by the Uniform County Court Rules.

child has suffered as a result, facts supporting the assertion the present reunification with at least one of the child's parents is not viable due to such abuse, neglect and/or abandonment, and facts supporting the assertion that it would not be in the child's best interests to return to his or her country of nationality].

Commented [KR3]: This is obviously evidence that will be developed at trial, but you should provide some details here, not only to set up your request for SIJ predicate findings, but also to demonstrate to USCIS later that this issue was raised in the initial state court pleadings.

5. Venue for this proceeding is proper in this county because [name of child] resides in [county of venue] County, Nebraska.

6. [Name of child] is not subject to the Nebraska Indian Child Welfare Act, NEB. REV. STAT. § 43-1503.

7. No guardian has been appointed for [name of child] by will or by order of any court, and no other proceeding for the appointment of a guardian is pending in any court.

8. There is no Temporary Delegation of Parental Powers, Power of Attorney, or Health Care Power of Attorney over [name of child].

9. The Court may appoint as guardian any person whose appointment would be in the best interests of the minor. The Court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the Court finds the appointment contrary to the best interest of the minor. NEB. REV. STAT. § 30-2610.

10. [Name of petitioner and/or person seeking to be appointed as guardian], Petitioner, whose address is [mailing address], is a competent person to be appointed Guardian of [name of child] and is not acting as guardian and/or conservator for any other wards or protected persons.

11. The following persons are required by law to be given notice of the time and place of hearing on this Petition:

Name Address Relation to Minor

[Names, addresses, and relationship to the minor of all those entitled to receive notice of the guardianship filing as required by NEB. REV. STAT. § 30-2611]

12. The names and addresses of persons who have had the principal care and custody of [name of child] during the last 60 days are:

Name Address Relation to Minor

[Names, addresses, and relationship to the minor of all such individuals]

13. The names and current addresses of the persons with whom [name of child] has resided within the past 5 years are: [names and current addresses of all such people as required by the UCCJEA, NEB. REV. STAT. § 43-1246]

14. Petitioner has not participated as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with [name of child].

15. Petitioner has no knowledge of any proceeding that could affect the current proceeding.

16. There are no persons not a party to this proceeding who have had physical custody of [name of child] or who may claim rights of legal custody or physical custody of, or visitation with, [name of child].

17. Petitioner is neither indebted to nor a creditor of the estate of [name of child].

WHEREFORE, Petitioner requests the following:

a) That the Court fix a time and place for hearing this Petition;

b) That the Court make findings that [name of child] is a minor child and that the appointment of a guardian is necessary or desirable as a means of providing

Commented [KR4]: Be sure to look carefully at the provisions of Neb. Rev. Stat. § 43-1246, which set out these requirements, and provide all of the information required by that statute.

Commented [KR5]: This allegation is required by Uniform County Court Rule § 6-1435.

continuing care and supervision of [name of child];

c) That the Court appoint [name of person seeking to be guardian] as guardian of [name of child];

d) That, since [name of child] has been abused, neglected or abandoned by [name of parent(s)], and, as a result, reunification with [name(s) of parent(s)] is not currently viable, that this Court enter an order, pursuant to NEB. REV. STAT. § 43-1328(b), finding that:

    a. [name of child] has been abused, neglected and/or abandoned by [name of parent(s)];

    b. Due to such abuse, neglect or abandonment, or similar basis under Nebraska law, reunification with [name(s) of parent(s)] is not currently viable; and

    c. It would not be in the best interests of [child's name] to be removed from the United States to a foreign country, including [child's name] country of origin or last habitual residence; and

e) For such other and further relief as may be appropriate.

DATED this _____ day of _____, 20[ ].

By: _____

[signature block of lawyer]

STATE OF NEBRASKA)
) ss.
COUNTY OF [County of Venue])

[Name of petitioner], the undersigned, being first duly sworn, states that [he/she] is the Petitioner in this case, that [he/she] is familiar with the facts in the Petition and knows its contents, and that the facts set forth in the Petition are true.

_____
[Name of petitioner], Petitioner

Subscribed in my presence and sworn to before me this ____ day of _____, 20[__].

_____
Notary Public

Commented [KR6]: The allegations required by § 43-1246 must be filed under oath. It is simplest to verify the allegations of the petition rather than attach a separate affidavit.