STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_ DISTRICT COURT DIVISION

\_\_\_\_\_\_J \_\_\_\_\_\_

IN THE MATTER OF

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Minor Child  **MOTION TO RECUSE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOW COMES THE RESPONDENT FATHER/MOTHER**, through counsel, and respectfully moves that the Honorable \_\_\_\_\_\_\_\_\_, Judge Presiding over the hearing on the Motion/Petition for Termination of Parental Rights recuse himself/herself in this matter. In support of this Motion, the Respondent shows unto the Court as follows:

1. The Petition for neglect in this matter was filed on or about [DATE].

2. The adjudication and disposition were held before the Honorable Judge \_\_\_\_\_\_\_ on [DATE], in which the court found the minor child was neglected pursuant to G.S. §7B-101(15). At disposition, the court ordered reunification as the permanent plan for the minor child.

3. At the Permanency Planning hearing held on [DATE], the Honorable \_\_\_\_\_\_\_\_\_\_\_\_changed the permanent plan from reunification to adoption.

4. Pursuant to Chapter 7B, Subchapter 1 “Abuse, Neglect, Depdency”, throughout the pendency of the case the court is required to make a determination of the child’s best interest and make orders consistent with the court’s determination of the child’s best interest. “The common thread running throughout the Juvenile Code is that the court must consider the child’s best interest in making all placements, whether at the dispositional hearing or the review hearing.” *In re Shue,* 63 N.C. App. 76, 303 S.E. 2d 636 (1983), modified, 311 N.C. 586, 319 S.E. 2d 567 (1984). “The essential requirement, at the dispositional hearing and the review hearing, is that sufficient evidence be presented to the trial court so that it can determine what is in the best interest of the child.” *Ibid.*

5. Pursuant to G.S. §7B-906.1 the court must make a determination whether it is in the child’s best interest to return home and if the child is not to return home, whether adoption should be pursued. G.S. § 7B-1110 governs the dispositional phase of a termination of parental rights hearing and requires that an order be entered reflecting the best interests of the child. “The child’s best interests are paramount. . . .” *In re Smith,* 56 N.C. App.142, 287 S.E. 2d 440, cert. denied, 306 N.C. 385, 294 S.E. 2d 212 (1982).

1. By entering an order changing the plan to adoption, the Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_ has already made a determination as to his/her judicial opinion about the minor child’s best interest. Since the Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_ has already formed an opinion that termination is in the child’s best interest, it would be prejudicial to the Respondent Father/Mother’s due process rights under the Fourteenth Amendment of the U.S. Constitution if the Honorable Judge \_\_\_\_\_\_\_\_\_\_\_ were to preside over the termination of parental rights hearing.
2. The Code of Judicial Conduct provides that “[a] Judge should disqualify himself in a proceeding in which his impartiality might be questioned…”. Code of Judicial Conduct Canon 3C (1)(a), 2002 Ann, R.N.C. 306.
3. The Respondent Father/Mother questions the impartiality of the Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ because said Judge has already ruled in the underlying case that it is in the best interest of the minor child to be adopted. It is Respondent Father/Mother’s position that said Judge cannot be impartial at the Termination of Parental Rights hearing where he/she must render a new opinion as to whether or not it is in the child’s best interest to be adopted.

**WHEREFORE,** the Respondent respectfully prays that the Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ recuse himself/herself from presiding over the termination of parental rights hearing in this matter.

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[Attorney’s name]

Attorney at Law

address

City, State, Zip

Phone #

State Bar Number: -----

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\*\*\*\* ADD CERTIFICATE OF SERVICE/ SERVE ALL KNOWN PARTIES \*\*\*\*