

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 19-1715

Caption [use short title]

Motion for: leave to file surreply

Set forth below precise, complete statement of relief sought:
To inform the Court of recent and important developments and their implications, Appellant New Hope requests leave to file a surreply in opposition to Appellee OCFS's motion to remove this appeal from the Expedited Appeals Calendar and OCFS's motion for a 30-day extension of time.

New Hope Family Services, Inc. v. Poole

MOVING PARTY: New Hope Family Services, Inc.

OPPOSING PARTY: Poole

- Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Roger G. Brooks

OPPOSING ATTORNEY: Laura Etlinger

[name of attorney, with firm, address, phone number and e-mail]

Alliance Defending Freedom

New York Office of the Attorney General

15100 N. 90th Street, Scottsdale, AZ 85260

The Capitol, Albany, NY 12224

tel: 480-444-0020; rbrooks@adflegal.org

tel: 518-776-2028; laura.etlinger@ag.ny.gov

Court- Judge/ Agency appealed from: U.S. District Judge Mae A. D'Agostino, Northern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Yes No
Has this relief been previously sought in this court? Yes No
Requested return date and explanation of emergency:

Opposing counsel's position on motion:
Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney:

s/ Roger G. Brooks Date: August 12, 2019

Service by: CM/ECF Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NEW HOPE FAMILY SERVICES,
INC.,

Plaintiff-Appellant,

No. 19-1715

v.

SHEILA J. POOLE, in her official
capacity as Acting Commissioner for
the Office of Children and Family
Services for the State of New York,

Defendant-Appellee.

NEW HOPE’S MOTION FOR LEAVE TO FILE SURREPLY

1. In its memorandum in support of its motion to remove this matter from the Court’s Expedited Appeals Calendar, OCFS represented that “the parties are currently negotiating a more formal partial stay of OCFS’s enforcement activities, which would allow New Hope to engage in specified adoption activities during the pendency of this appeal.” ECF No. 36 at 8–9. That representation was accurate at the time counsel made it. In its opposition, New Hope similarly stated that “New Hope appreciates the collegial manner in which those discussions have proceeded, believes the parties have reached an agreement in principle, and trusts that the agreement will be formalized.” ECF No. 38 at 8. This understanding was material to

OCFS's justification for its motion to remove this matter from the Expedited Appeals Calendar. ECF No. 36 at 8–9. And it also was material to New Hope's consent to OCFS's alternative request for a 30-day extension of time to file OCFS's brief. ECF No. 38 at 1–3, 7–8.

2. Just days later, on August 8, 2019, OCFS repudiated that agreement in principle without explanation, telling this Court somewhat cryptically that “it no longer seems likely that the negotiations will result in a stay agreement.” ECF No. 41 at 1. Later that same day, OCFS sent an “enforcement letter” to New Hope demanding that New Hope violate its religious beliefs or else submit “a plan to close New Hope's adoption program, within 15 calendar days of receipt of this letter.” (Enforcement Letter attached as Exhibit 2 to New Hope's proposed Surreply, which is attached here as Exhibit A.)

3. In short, the briefing on this motion was based, in important part, on representations from OCFS which no longer hold true. OCFS's complete and unexplained reversal of its position severely undercuts its request to move New Hope's appeal to a slower track, as well as its request for extra time to prepare its brief in that appeal. Meanwhile, OCFS's abrupt threat to shut down New Hope's ministry on 15 days'

notice increases the need for New Hope's appeal of the dismissal below to be heard as urgently as possible.

4. For these reasons and to inform the Court in more detail of these recent and important developments and their implications, New Hope respectfully requests leave to file the surreply in opposition to OCFS's motions that New Hope has attached here as Exhibit A.

5. Counsel for OCFS has been advised of the intended filing of this motion, and counsel advises that OCFS does not consent to this motion for leave. Counsel for OCFS further advises that OCFS does not know whether OCFS intends to file a response.

Dated: August 12, 2019

Respectfully submitted,

s/Roger G. Brooks

Roger G. Brooks

NY Bar No. 2260537

Alliance Defending Freedom

15100 N. 90th Street

Scottsdale, AZ 85260

(480) 444-0020

rbrooks@ADFlegal.org

*Attorney for Appellant New Hope
Family Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, a copy of this motion was filed electronically with the Clerk of the Second Circuit Court of Appeals. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

s/ Roger G. Brooks _____
Attorney for Appellant

EXHIBIT A

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NEW HOPE FAMILY SERVICES,
INC.,

Plaintiff-Appellant,

No. 19-1715

v.

SHEILA J. POOLE, in her official
capacity as Acting Commissioner for
the Office of Children and Family
Services for the State of New York,

Defendant-Appellee.

**SURREPLY TO OCFS'S MOTION TO REMOVE NEW HOPE'S
APPEAL FROM EXPEDITED APPEAL CALENDAR AND TO
OCFS'S MOTION FOR A 30-DAY EXTENSION OF TIME**

1. In its reply dated August 8, 2019, OCFS states—contrary to the representations of both OCFS and New Hope in their initial briefs on these motions—that “it no longer seems likely” that the parties will reach agreement on terms that permit New Hope to continue certain adoption-related services during the pendency of this appeal.

2. New Hope respectfully submits this surreply 1) to explain that opaque statement; 2) to call to the Court's attention OCFS's simultaneous and devastating action to immediately terminate all of New Hope's adoption services—even for in-process adoptive couples; and 3) to note the significance that OCFS's unexplained about-face has

for OCFS's motion to remove New Hope's appeal from the Expedited Appeals Calendar and for OCFS's request for a 30-day extension of its time to file its brief.

3. The parties did not simply fail to reach agreement. On the contrary, the parties—working through counsel—reached an agreement in principle that would permit New Hope to continue providing adoption services *only* to its existing adoptive couples as of the time the Complaint was filed, obviating any concern about prospective “discrimination” against new applicants. This prompted both parties’ statements in the opening briefing on this motion predicting finalization of such an agreement. As New Hope summarized in its opposition pleading, “New Hope appreciates the collegial manner in which those discussions have proceeded, believes the parties have reached an agreement in principle, and trusts that the agreement will be formalized.” ECF No. 38 at 8. Indeed, after some back-and-forth about precise wording, OCFS proposed a full set of terms, and New Hope told OCFS in response that it accepted those terms. (Email Chain attached as Exhibit 1.)

4. As it turned out, however, counsel for OCFS had (unbeknownst to New Hope’s counsel and without explanation) sent counsel an email retracting that offer without explanation less than two hours earlier—perhaps technically avoiding “offer and acceptance”—and counsel for OCFS refused to discuss such an agreement further.

5. Later the same day, OCFS sent New Hope an “enforcement letter” demanding New Hope violate its religious beliefs or else submit “a plan to close New Hope’s adoption program, within 15 calendar days of receipt of this letter.” (Enforcement Letter attached as Exhibit 2.)

A. Implications for OCFS’s motion to remove New Hope’s appeal from this Court’s Expedited Appeals Calendar.

6. It is remarkable for OCFS to make a motion against expedition, relying importantly on a representation that an agreement was pending that would mitigate any resulting risk or harm for New Hope, and then entirely back out of that agreement without explanation and take aggressive action to close down New Hope’s adoption services entirely—all without withdrawing its motion to “de-expedite.” The threat to New Hope’s ability to keep its adoption ministry viable long enough for New Hope’s First Amendment rights to be vindicated is obvious and immediate. It is thus all the more important for New

Hope's appeal of the dismissal below to remain on this Court's Expedited Appeals Calendar.

B. Implications for OCFS's request for a 30-day extension on its time to file its appellee's brief.

7. When OCFS first requested a 30-day extension, New Hope responded that there was an "unavoidable connection" between such an extension and the "stand-still" agreement that the parties were then discussing, so that "more time for [counsel for OCFS] does not create more risk for [New Hope]." (7/22/19 letter from R. Brooks to L. Etlinger attached as Exhibit 3.) In OCFS's motion, as noted above, OCFS strongly confirmed New Hope's belief that the agreement was on track to final documentation. ECF No. 36 at 8–9. Accordingly, New Hope consented to OCFS's request for a 30-day extension. ECF No. 38 at 1, 7.

8. But OCFS's repudiation of the parties' agreement in principle concerning limited interim provision of adoption services by New Hope eliminates the basis of New Hope's consent to OCFS's request for extra time. Unfortunately, in light of the extremely aggressive and hostile enforcement action that OCFS initiated yesterday, New Hope must now withdraw that consent. Briefing for New Hope's appeal must proceed with the utmost expedition.

9. Second Circuit Local Rule 27.1(f)(1) states that the Court will not grant a motion to extend the time to file a brief absent an “extraordinary circumstance, such as serious personal illness or death in counsel’s immediate family.” Local Rule 27.1(f)(1). Counsel for New Hope wished to accommodate counsel for OCFS’s personal schedule if possible, and so consented so long as counsel for New Hope understood that an agreement in principle providing interim protection for New Hope had been reached. OCFS has now rejected any such agreement. And counsel’s recitation of her office’s overburdened calendar does not rise to the high threshold set by Rule 27.1(f)(1).

10. Finally, OCFS’s abrupt and unexplained withdrawal from the interim agreement creates irreversible and immediate harm. The agreement OCFS has repudiated would have protected the interest of the couples that New Hope is already working with while avoiding any of the issues raised by OCFS, because New Hope was willing to commit not to accept any new couples into its adoption process during the pendency of the agreement. Withdrawal from that agreement cannot serve any of the alleged State interests identified by the court below.

11. Instead, OCFS’s abrupt withdrawal is difficult to explain on any basis other than animus and hostility—a desire to “punish” New Hope and to proclaim to the world that there is indeed “no room” in New York for an organization that holds to time-honored religious beliefs about human sexuality, marriage, and family.

Conclusion

For these reasons, New Hope asks the Court to deny OCFS’s motion to remove this appeal from the Expedited Appeals Calendar, and New Hope further asks the Court to deny OCFS’s request for a 30-day extension of time to file its brief in this appeal.

Dated: August __, 2019

Respectfully submitted,

s/Roger G. Brooks

Roger G. Brooks

NY Bar No. 2260537

Alliance Defending Freedom

15100 N. 90th Street

Scottsdale, AZ 85260

(480) 444-0020

rbrooks@ADFlegal.org

*Attorney for Appellant New Hope
Family Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August __, 2019, a copy of this surreply was filed electronically with the Clerk of the Second Circuit Court of Appeals. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

s/ Roger G. Brooks
Attorney for Appellant

EXHIBIT 1

From: [Roger Brooks](#)
To: [Etlinger, Laura](#)
Subject: RE: Revised agreement language - New Hope Family Services, Inc. v. Poole
Date: Tuesday, August 6, 2019 8:31:00 PM
Attachments: [image001.png](#)

Laura, your terms a-f are acceptable to New Hope, as you have them phrased.

A moment on the duration:

You write, "For the pendency of the appeal:" My original proposal to Ms. Kerwin was, in substance, "until the first to occur of the 2nd Cir. affirming the dismissal, or a ruling by any court on the merits on New Hope's motion for a preliminary injunction." I think this temporal frame makes sense. If the 2nd cir. remands, then we will more or less be back where we started, and I'll suggest that the State should agree that precipitous action while a PI motion is pending would be inappropriate.

Please let me know your thoughts.

Regards,

Roger G. Brooks
Senior Counsel
Alliance Defending Freedom
(207) 864-2054

From: Etlinger, Laura [mailto:Laura.Etlinger@ag.ny.gov]
Sent: Friday, August 2, 2019 11:33 AM
To: Roger Brooks <rbrooks@adflegal.org>
Subject: RE: Revised agreement language - New Hope Family Services, Inc. v. Poole

Roger,

OCFS wanted to add one additional request for information. See below in red.

For the pendency of the appeal:

- a) New Hope will not accept any new prospective adoptive parents.
- b) New Hope can continue the adoption study process for any individuals who completed orientation prior to commencement of the lawsuit (December 2018).
- c) New Hope will provide OCFS with a list naming each applicant to be an adoptive parent and each approved adoptive parent.
- d) New Hope can continue to supervise placements of children in its legal custody.
- e) New Hope can continue to accept surrenders of children and place out children with those adoptive applicants who have been approved.
- f) New Hope will inform OCFS when a child is placed with an approved adoptive parent and when an adoption is finalized.

- g) This agreement will remain in effect during the pendency of Second Circuit Appeal No. 19-1715.
- h) If New Hope desires to terminate the agreement before completion of the appeal, it must provide written notice of its intent to terminate by overnight mail to the Office of the Attorney General at the address below. If New Hope provides such notice, the agreement will terminate 30 days following service of such notice.

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Etlinger, Laura
Sent: Thursday, August 1, 2019 6:14 PM
To: Roger Brooks <rbrooks@adflegal.org>
Subject: Revised agreement language - New Hope Family Services, Inc. v. Poole
Importance: High

Dear Roger,

Below please find revised language for the stay agreement. In lieu of allowing New Hope to provide notice of intent to accept new prospective parents, the agreement would allow New Hope to terminate the agreement on 30 day's notice. Also, instead of the numbers on prospective parents and children we requested the other day, OCFS has included in the agreement information it would like to receive during the pendency of the agreement. The request for information should not be objectionable, as it is information OCFS could obtain through an inspection.

We have also determined not to withdraw our motion to remove the appeal from the expedited calendar. As set forth in our motion, we do not believe this appeal is appropriate for expedited review. We understand that you may feel you need to oppose the motion to expedite, but we hope that you will nonetheless indicate to the Court that you do not oppose the alternative relief of a 30-day extension, should the appeal remain on the expedited calendar.

I look forward to hearing your response to the proposed agreement.

"The following agreement governs OCFS's response to New Hope's stated policy of not accepting prospective adoptive couples who are unmarried or the same sex, which OCFS maintains violates the non-discrimination policy promulgated at 18 NYCRR § 421.3(d). This agreement does not preclude OCFS from taking action with respect to any other potential violations of state law, regulation, or policy by New Hope, should such violations occur.

For the pendency of the appeal:

- a) New Hope will not accept any new prospective adoptive parents.
- b) New Hope can continue the adoption study process for any individuals who completed orientation prior to commencement of the lawsuit (December 2018).
- c) New Hope will provide OCFS with a list naming each applicant to be an adoptive parent and each approved adoptive parent.
- d) New Hope can continue to supervise placements of children in its legal custody.
- e) New Hope can continue to accept surrenders of children and place out children with those adoptive applicants who have been approved.
- f) New Hope will inform OCFS when a child is placed with an approved adoptive parent.
- g) This agreement will remain in effect during the pendency of Second Circuit Appeal No. 19-1715.
- h) If New Hope desires to terminate the agreement before completion of the appeal, it must provide written notice of its intent to terminate by overnight mail to the Office of the Attorney General at the address below. If New Hope provides such notice, the agreement will terminate 30 days following service of such notice.

Such notice will be provided to:
Laura Etlinger
Assistant Solicitor General
New York State Office of the Attorney General
Albany, New York 12224

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Etlinger, Laura
Sent: Thursday, August 1, 2019 11:17 AM
To: Roger Brooks <rbrooks@adfflegal.org>
Subject: RE: New Hope Family Services, Inc. v. Poole--Agreement and schedule

Roger,

Just touching base with an update. We are working on getting approval for proposed alternative language and are also awaiting your response to the inquiry below.

Laura

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol

Albany, New York 12224
(518) 776-2028

From: Etlinger, Laura
Sent: Tuesday, July 30, 2019 11:25 AM
To: Roger Brooks <rbrooks@adflegal.org>
Subject: RE: New Hope Family Services, Inc. v. Poole--Agreement and schedule

Great. We're working on some language here. Also, OCFS will want status information about New Hope's prospective parents and current children placed in its legal custody. This information relates to the questions we had posed last week, as updated to reflect the proposed agreement.

1. Please indicate the number of prospective parents who had completed the introduction and orientation process as of December 2018, and the total number of prospective adoptive parents in New Hope's parent registry.
2. Please indicate the number of children currently in New Hope's legal custody and the status of the three children that were placed in New Hope's custody at the time of the complaint.

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Roger Brooks <rbrooks@adflegal.org>
Sent: Tuesday, July 30, 2019 11:06 AM
To: Etlinger, Laura <Laura.Etlinger@ag.ny.gov>
Subject: RE: New Hope Family Services, Inc. v. Poole--Agreement and schedule

That's not my intent, so I'm sure we can solve it with careful drafting.

Roger G. Brooks
Senior Counsel
Alliance Defending Freedom
(207) 864-2054

From: Etlinger, Laura [<mailto:Laura.Etlinger@ag.ny.gov>]

Sent: Tuesday, July 30, 2019 10:56 AM

To: Roger Brooks <rbrooks@adflegal.org>

Subject: RE: New Hope Family Services, Inc. v. Poole--Agreement and schedule

Dear Roger,

Your proposed language change is problematic because it indicates OCFS agrees to allow New Hope to accept new parent applications if notice is provided. I do not believe that was our understanding and it does not reflect OCFS's intent. We'll work on proposed language on our end, but would be happy to consider alternative language you propose.

We will consider your additional questions as well.

Regards,

Laura

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Roger Brooks <rbrooks@adflegal.org>

Sent: Tuesday, July 30, 2019 7:52 AM

To: Etlinger, Laura <Laura.Etlinger@ag.ny.gov>

Cc: Jeana Hallock <jhallock@adflegal.org>; Jake Warner <jwarner@adflegal.org>

Subject: RE: New Hope Family Services, Inc. v. Poole--Agreement and schedule

Dear Laura:

Your more precise statement of the agreement is acceptable to my client, with the clarification that your first bullet is subject to the last. That is, with edits in red to show my additions.

"For the pendency of the appeal:

- a) New Hope will not accept any new prospective adoptive parents **unless after the prior notice specified in (e) below.**
- b) New Hope can continue the adoption study process for any individuals who completed orientation prior to commencement of the lawsuit (December 2018).
- c) New Hope can continue to supervise placements of children in its legal custody.
- d) New Hope can continue to accept surrenders of children and place out children with those adoptive applicants who have been approved.
- e) OCFS will receive 30-days **written** notice from New Hope (form of notification to be

decided) if New Hope intends to begin accepting new adoptive parent applicants.”

As to the form of notification, should that occur, for convenience I’ll propose notice in writing, directed to your attention.

As to your motion, as I told you it is not our goal to make your life difficult, and with the above agreement in place we will certainly agree to a 30 day extension for OCFS to file its opposition to our appeal brief. With that extension agreed, will you consider withdrawing your motion to remove New Hope’s appeal from the Second Circuit’s expedited calendar?

Best regards,

Roger G. Brooks
Senior Counsel
Alliance Defending Freedom
(207) 864-2054



Roger Brooks
Sr. Counsel
+1 480 444 0020 (Office)
+1 480 388 8211 (Direct Dial)
+1 917 843 4251 (Mobile)
rbrooks@adflegal.org
ADFlegal.org

From: Etlinger, Laura [<mailto:Laura.Etlinger@ag.ny.gov>]

Sent: Monday, July 29, 2019 3:32 PM

To: Roger Brooks <rbrooks@adflegal.org>; Jeana Hallock <jhallock@adflegal.org>

Subject: RE: New Hope Family Services, Inc. v. Poole

Dear Roger,

OCFS has reviewed your proposal regarding an agreement to allow New Hope Family Services to continue certain adoption service activities pending resolution of this appeal. OCFS can agree in principle to your proposal as follows:

For the pendency of the appeal:

- a) New Hope will not accept any new prospective adoptive parents **unless after the prior notice specified in (e) below.**
- b) New Hope can continue the adoption study process for any individuals who completed orientation prior to commencement of the lawsuit (December 2018).

- c) New Hope can continue to supervise placements of children in its legal custody.
- d) New Hope can continue to accept surrenders of children and place out children with those adoptive applicants who have been approved.
- e) OCFS will receive 30-days **written** notice from New Hope (form of notification to be decided) if New Hope intends to begin accepting new adoptive parent applicants.

Please note that I will be filing my motion shortly. If you cannot agree that the appeal should be removed from the expedited appeal calendar, I hope you will consider advising the Court that you consent to the alternative relief sought of a 30-day extension for OCFS's brief. If so, I would not object to a reasonable extension for New Hope's reply brief.

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Etlinger, Laura
Sent: Thursday, July 25, 2019 7:30 PM
To: rbrooks@adflegal.org; Jeana Hallock <jhallock@adflegal.org>
Subject: RE: New Hope Family Services, Inc. v. Poole

Dear Mr. Brooks,

OCFS is currently reviewing your proposal regarding a limited stay of enforcement action and has some questions and requests for additional information to facilitate a response. I am happy to discuss this matter on the phone but thought it might be helpful to send this email in advance of a phone call.

I am also writing to advise that we have decided to make a motion to remove the appeal from the Expedited Appeals Calendar pursuant to Second Circuit Rule 31.2(b)(2) or for a thirty-day extension for appellee's brief pursuant to Second Circuit Rule 27.1. The current deadline of September 19 is not possible in light of my current workload, which includes three oral arguments in late August/early September, including an argument in the New York Court of Appeals; and three additional briefs during this time period. Further, our office is currently down three attorneys (due to recent leaves and departures) and it was therefore not possible to reassign this appeal to another attorney. Because this motion must be made "promptly" after a case is placed on the Expedited Appeals Calendar, I do not anticipate that we will have reached a final stay agreement before I file my motion (on Monday), but perhaps we can reach a short-term interim assurance as you suggested.

Regarding your proposal, I first need to clarify that during litigation in District Court, New Hope identified three children who were currently in New Hope's legal custody pending finalization of

adoption. Doc. 1, at 4 (complaint). OCFS agreed that New Hope could continue to supervise these placements through to finalization of the adoptions. OCFS also agreed that parents approved to adopt would retain their status as an approved adoptive family. Finally, OCFS agreed that New Hope could continue to administer any post-adoption contact agreements. Doc. 32, at 4 (McCarthy Declar.)

Thus, according to your proposal, New Hope has been engaging in some activities that were not subject to the agreement described above. Nonetheless, OCFS is currently considering your proposal to stay discontinuance of its approval in part, and allow New Hope to engage in these additional activities during the pendency of the appeal, with reconsideration of the proposal during further litigation if dismissal of the complaint is reversed. In connection with OCFS's consideration of your proposal, please provide the additional information indicated below.

1. Request to continue to work with parents who have already applied and gone through New Hope's introduction and orientation process:
 - Please confirm that this request pertains only to parents who had completed the introduction and orientation process as of December 2018.
2. Request to continue to work with birth mothers.
 - Please explain what services are being provided. Please confirm whether New Hope has obtained legal custody of any additional children since the filing of the complaint. In addition, what is the status of the three children that were placed in New Hope's custody at the time of the complaint?
3. New Hope will provide OCFS notice before accepting new adoptive parents.
 - Please explain what you believe the purpose of the notice to OCFS serves.

I look forward to discussing these matters and will call you tomorrow.

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Etlinger, Laura
Sent: Thursday, July 18, 2019 12:24 PM
To: rbrooks@adflegal.org; Jeana Hallock <jhallock@adflegal.org>
Subject: RE: New Hope Family Services, Inc. v. Poole

Dear Counsel,

In light of the fact that we did not receive a response to my inquiry below, sent in response to Mr. Brooks' letter of July 3, 2018, I am writing for a status update.

Please advise:

- (1) The number of children that remain in placement pending final adoption;
- (2) The number of prospective adoptive parents you have approved since the commencement of this litigation;
- (3) The number of birth parents you have agreed to serve since the commencement of this litigation.

Thank you,
Laura

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Etlinger, Laura
Sent: Monday, July 8, 2019 3:36 PM
To: rbrooks@adflegal.org
Subject: RE: New Hope Family Services, Inc. v. Poole

Dear Mr. Brooks,

As Adrienne Kerwin mentioned, I will be handling the appeal on behalf of the State appellee. Adrienne has forwarded me your letter regarding a potential agreement regarding New Hope Family Services' activities during the pendency of the appeal. It is not clear to us from your letter exactly what activities New Hope Family Services is seeking to engage in during the pendency of the appeal. Please respond in writing by letter or email indicating exactly what activities New Hope seeks to engage in pending the appeal and I will discuss your request with my client.

Thank you,

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2028

From: Stacie Harris <sharris@adflegal.org>
Sent: Wednesday, July 3, 2019 5:07 PM
To: Kerwin, Adrienne <Adrienne.Kerwin@ag.ny.gov>
Cc: Roger Brooks <rbrooks@adflegal.org>; Jeana Hallock <jhallock@adflegal.org>
Subject: New Hope Family Services, Inc. v. Poole

Dear Ms. Kerwin,

Please find attached a letter from Mr. Brooks on behalf of New Hope Family Services regarding the above-referenced case.

Best regards,

Stacie Harris



Stacie Harris
Legal Secretary
+1 480 444 0020 (Office)
+1-480-388-8114 (Direct Dial)
SHarris@ADFlegal.org
ADFlegal.org

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EXHIBIT 2



Office of Children and Family Services

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Commissioner

August 8, 2019

Kathy Jerman
Executive Director
New Hope Family Services
3519 James Street
Syracuse, NY 13206

Dear Ms. Jerman:

The New York State Office of Children and Family Services (OCFS) is writing in furtherance of its letter, dated October 16, 2018, which informed New Hope Family Services (New Hope) of its determination that New Hope's policy precluding the placement of children with same sex couples or unmarried cohabitating couples was discriminatory and impermissible. That letter directed New Hope to submit a formal written response identifying whether it was going to revise its policy and practices to come into compliance with 18 NYCRR 421.3, or if it intended to submit a close-out plan for its adoption program.

By decision dated May 16, 2019, United States District Court Judge Mae D'Agostino determined that "OCFS stands on firm ground in requiring authorized agencies to abide by New York's non-discrimination policies when administering public services" and found that New Hope had failed to plausibly state a claim alleging an infringement of its right to free exercise of religion. As stated previously, OCFS cannot continue to approve New Hope's adoption program if it does not bring its policy and practices into compliance with the above-cited regulation.

Accordingly, please submit confirmation that New Hope will come into compliance with the regulation, or a plan to close New Hope's adoption program, within 15 calendar days of receipt of this letter. If New Hope chooses to close its adoption program, OCFS will provide all necessary guidance and assistance to ensure minimal disruption to children and families receiving adoption services.

Sincerely yours,

Lisa Gartey-Ogundimu
Deputy Commissioner, Division of Child Welfare and Community Services

cc: Roger G. Brooks, Esq.

EXHIBIT 3



July 22, 2019

Via email to laura.etlinger@ag.ny.gov

Laura Etlinger, Esq.
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224

Dear Laura,

Thank you for your email of Friday.

While we do not need an extension of time to file our own brief, we have no objection in principle to the ten-day extension for defendants that you request, and certainly want to accommodate your needs. With that said, you will understand that it is difficult for us to agree to any extensions to the expedited schedule while our client faces the possibility of abrupt adverse action by OCFS against New Hope's operations at any time.

As a result, there is an unavoidable connection between your request for more time and the request and proposal sketched in my own letter sent on Friday, which would ensure that more time for you does not create more risk for my client. If we can reach agreement on those terms or some similar short-term interim assurances, then we will agree to your request and join a joint motion for an extension of your time to file your opposition brief, and of course of our time to reply.

Please let me know your thoughts. I would be happy to discuss this with you by telephone if you think that would be more efficient.

Best Regards,

/s/ Roger G. Brooks

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