

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NEW HOPE FAMILY SERVICES, INC.,

5:18-cv-1419 (MAD/TWD)

Plaintiff,

vs.

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

**Notice of Intent to File Motion
for Preliminary Injunction and
Request for Telephonic
Conference if necessary**

Defendant.

By this filing, Plaintiff New Hope Family Services, Inc., notifies this Court of its intention to file a motion for preliminary injunctive relief and requests direction from this Court

1. On December 6, 2018, New Hope filed a Complaint for injunctive and declaratory relief against Defendant seeking to prevent Defendant from revoking its perpetual authorization to place children for adoption, an authorization New Hope has had for over 50 years.

2. New Hope is a New York authorized adoption services provider. It has served over 1,000 children since 1965 by facilitating their placement into loving adoptive families. (VC ¶5). New Hope was formed by ministers and Christian philanthropists as a Christian ministry for the purposes of providing foster care and adoption placement services, among other things. (VC ¶¶ 42, 47-50). New Hope operates its agency consistent with its Christian faith, including its beliefs about marriage and the family. (VC ¶¶ 52, 56). New Hope serves all people through its pregnancy resource center, including providing counseling and tangible resources to

help all families with children—without regard for any characteristic that sets them apart. But New Hope’s religious beliefs about marriage and the family prevent New Hope from counseling and recommending unmarried couples and same-sex couples as adoptive parents for the children it places for adoption.

3. The Office of Children and Family Services for the State of New York learned of New Hope’s religious beliefs following an on-site visit, when reviewing the agency’s policy and procedure manual. Based on those religious beliefs alone, OCFS issued an ultimatum to New Hope to comply with N.Y. Comp. Codes R. & Regs. tit 18, § 421.3(d) to counsel and recommend unmarried couples and same-sex couples as adoptive parents and to place children with them. If New Hope could not violate its beliefs, it would instead be required to create a “close out plan” and will lose the perpetual authorization it has had for over 50 years to make foster and adoption placements. (VC ¶¶ 188-199).

4. New Hope was granted an extension of time to respond to OCFS’ demands until November 30, 2018. (VC ¶199). On that date, New Hope notified OCFS that it was represented by counsel who would respond within one week. Since New Hope was first notified of OCFS’ position, despite New Hope’s explanation of its religious beliefs, OCFS’ position has been unchanged. Because New Hope’s authorization to operate is in jeopardy, New Hope has been forced to turn away birthmothers seeking adoption placements for their children, parents who desire children to be placed with them, and New Hope fears being unable to proceed with

the several families and birth parents who are in various stages of the adoption process. Accordingly, New Hope is in need of preliminary injunctive relief.

5. The local rules of this Court treat injunction motions as non-dispositive motions that require a conference with opposing counsel before filing. Specifically, local rule 7.1(b)(2) requires the parties to make “good faith efforts among themselves to resolve or reduce all differences relating to the non-dispositive issue.” It then requires a conference with a Magistrate Judge as “a prerequisite to filing a non-dispositive motion.” New Hope understands that the only non-dispositive motions that can be filed without a conference are motions for temporary restraining orders or orders to show cause.

6. Because New Hope is not aware of who counsel for Defendant will be, New Hope is unable to meet and confer.

7. Additionally, New Hope has attempted to persuade OCFS to remove its ultimatum to no avail, leaving it no choice but to seek relief from this Court.

8. New Hope intends to serve its Complaint and this Notice on Defendant at her principal place of business on December 7, 2018.

9. New Hope is prepared to file a motion for preliminary injunction but awaits this Court’s guidance as to whether the Court will first require a conference with the Magistrate Judge.

10. Counsel for New Hope is willing to participate in a telephonic conference with the Court if this Court deems such a conference necessary or beneficial.

Dated: December 6, 2018

Respectfully submitted,

s/Jon Scruggs

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**Pro Hac Vice application forthcoming*

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2018, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system. And, I hereby certify that, I will cause this document to be personally served on the following non-CM/ECF participants:

Sheila Poole
Acting Commissioner
Office of Children and Family Services for the State of New York
Capital View Office Park
North Building
52 Washington Street
Rensselaer, NY 12144

s/ Jon Scruggs
Attorney for Plaintiff