

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

CATHOLIC CHARITIES OF THE)	
DIOCESE OF SPRINGFIELD-IN-ILLINOIS,)	
an Illinois non-profit corporation,)	
CATHOLIC CHARITIES OF THE)	
DIOCESE OF PEORIA, an Illinois non-profit)	
corporation, and CATHOLIC CHARITIES)	
OF THE DIOCESE OF JOLIET, INC., an)	
Illinois non-profit corporation,)	
)	
Plaintiffs,)	
)	Case No. 11-MR-254
v.)	
)	
STATE OF ILLINOIS, LISA MADIGAN, in)	
her official capacity as the Attorney General)	
of the State of Illinois, ERWIN McEWEN, in)	
his official capacity as Director of the)	
Department of Children and Family Services,)	
State of Illinois, and the DEPARTMENT OF)	
CHILDREN AND FAMILY SERVICES,)	
State of Illinois,)	
)	
Defendants.)	

DECLARATION OF SUSAN TONE PIERCE, NEXT FRIEND
IN *B.H. v. McEWEN*, No. 88 C 5599 (N.D.Ill.)

The undersigned, pursuant to 735 Ill. Comp. Stat. 5/1-109, declares that she is an adult over the age of 18 and is competent to testify to the following matters if called as a witness:

1. I am an attorney licensed to practice law in Illinois since 1983. I received a law degree from the University of Illinois College of Law from which I graduated in 1983. From 1983 to 1985, I served as a law clerk for U.S. District Judge Prentice H. Marshall. From 1985 to 1987, I practiced law at what was then Mayer, Brown & Platt. I served as a staff attorney in the Office

of the Cook County Public Guardian from January 1988 until 1990, working first at the trial level in Juvenile Court, and then in the Long-Term Litigation Section of the Juvenile Division, which handled appeals from Juvenile Court, class actions, and suits on behalf of individual wards against the Illinois Department of Children and Family Services (DCFS). Since that time I have been actively involved in community activities and have served without compensation as the Next Friend to a certified plaintiff class of children as described below.

2. In 1988, ten (10) plaintiff children who had been removed from their homes and placed in the custody of DCFS filed *B.H. v. McEwen*, No. 88 C 5599 (N.D. Ill.), an action in the U.S. District Court in the Northern District of Illinois. The Complaint was filed on behalf of the named plaintiffs and a proposed class of all other children similarly situated (the "Children"). It alleged violations of the Children's constitutional and other rights by defendant DCFS. The Children claimed, among other things, that they repeatedly were subjected to serious damage to their psychological and physical well-being because DCFS failed to provide them with safe and stable foster and residential placements, shuffled many of them among multiple living arrangements, failed to provide them with appropriate mental health and other medical care, and engaged in other conduct violating plaintiffs' rights under the Fourteenth Amendment to the United States Constitution.

3. In February of 1989, the Court certified the proposed class of Children pursuant to Federal Rule of Civil Procedure 23(b)(2), and defined the class to include all persons who, on or after the date of the commencement of the action, are in the custody of DCFS and have been placed somewhere other than with their parents. Pursuant to Federal Rule of Civil Procedure 17, a Next Friend was appointed to represent the interests of the plaintiff class of minors.

4. Following extensive discovery, numerous pretrial proceedings, a detailed report from a Court-appointed panel of experts, and a hearing pursuant to Federal Rule of Civil Procedure 23(e), the parties entered into the *B.H.* Consent Decree approved by the District Court in December of 1991. Several modifications to the Consent Decree were approved by the Court, and the parties filed a Restated Consent Decree reflecting these modifications in 1997. The Restated Consent Decree (*B.H.* Consent Decree) is attached as Exhibit A.

5. The *B.H.* Consent Decree addresses core deficiencies that the Court-appointed expert panel had identified in DCFS' performance of its basic mission, including the need for safe and stable placements based on the best interests of the Children, provision of adequate health and mental health care, education, staffing, accountability, and making reasonable efforts to find permanent homes for children. The Decree binds DCFS to the promises therein, and the District Court has retained jurisdiction to enforce the Decree.

6. I have served as Next Friend on behalf of the plaintiff class of Children in *B.H. v. McEwen* since November 7, 1990, when I replaced the original Next Friend appointed to represent plaintiff minors in the case. The Appointment Order is attached as Exhibit B.

7. The relief that certain Catholic Charities social services agencies seek in their current controversy with DCFS regarding their provision of foster care services to the *B.H.* plaintiff class raises conflicts with DCFS' on-going and legally binding obligations to the Children pursuant to the *B.H.* Consent Decree. In addition to the provision of adequate care and services for the Children in its custody, DCFS is bound under the Decree to follow accepted child welfare practices with regard to the placement of Children in its care based on the best interests of the Children and with regard to licensing standards for foster care agencies that carry out its work. *See* paragraphs 34 & 55 of the *B.H.* Consent Decree. Catholic Charities has a stated

policy of discriminating against and automatically disqualifying otherwise-qualified potential foster or adoptive parents on the basis of their non-married, co-habiting status when making placement determinations for the Children. That position directly conflicts with professional and accepted child welfare practice standards and the considerations relevant to a “best interests” determination under the federal constitution, Illinois law and DCFS rules. As stated in the intervention motion and our proposed filing of Dismissal and Summary Judgment papers, this deviation from accepted practice will result in actual harm to the *B.H.* plaintiff class.

8. Because the proposed relief in this case would interfere with the placement and licensing standards which the *B.H.* Consent Decree requires DCFS to maintain and would cause harm to *B.H.* class members, it is my duty as Next Friend to the *B.H.* plaintiff class to assert their interests. For this reason, and in my capacity as Next Friend to the *B.H.* plaintiff class, I respectfully move on their behalf for leave to intervene as Defendants in the above captioned case, and move to dismiss this action on the ground that it is preempted by the *B.H.* Consent Decree, or in the alternative, for summary judgment for the Intervenors.

Under penalties as provided by law, pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to such matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: July 19, 2011

Susan Tone Pierce
Susan Tone Pierce