

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James and Lorie Jensen, as parents, guardians,
and next friends of Bradley J. Jensen; James
Brinker and Darren Allen, as parents,
guardians, and next friends of Thomas M.
Allbrink; Elizabeth Jacobs, as parent, guardian,
and next friend of Jason R. Jacobs; and others
similarly situated,

Civil No. 09-1775 (DWF/BRT)

Plaintiffs,

v.

ORDER

Minnesota Department of Human Services,
an agency of the State of Minnesota; Director,
Minnesota Extended Treatment Options, a
program of the Minnesota Department of
Human Services, an agency of the State of
Minnesota; Clinical Director, the Minnesota
Extended Treatment Options, a program of
the Minnesota Department of Human Services,
an agency of the State of Minnesota; Douglas
Bratvold, individually and as Director of the
Minnesota Extended Treatment Options, a
program of the Minnesota Department of Human
Services, an agency of the State of Minnesota;
Scott TenNapel, individually and as Clinical
Director of the Minnesota Extended Treatment
Options, a program of the Minnesota Department
of Human Services, an agency of the State of
Minnesota; and the State of Minnesota,

Defendants.

Shamus P. O'Meara, Esq., and Mark R. Azman, Esq., O'Meara Leer Wagner & Kohl,
PA, counsel for Plaintiffs.

Scott H. Ikeda, Aaron Winter, Anthony R. Noss, and Michael N. Leonard Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

The Court has received and considered State Defendants' proposed agenda item for the April 16, 2019 Biannual Status Conference. ([Doc. No. 731](#).) Defendants propose the following: "State Defendants respectfully propose that the Court add an agenda item to address the applicable legal standard the Court is using to determine the circumstances under which it will end its involvement in this matter, including what specific actions remain outstanding." (*Id.*)

The Court acknowledges the importance of this topic and recognizes that it was not fully resolved after the July 12, 2018 Biannual Status Conference. Particularly in light of the March 2019 Summary Report ([Doc. No. 710](#)), the Court is now equipped to properly evaluate the propriety of its ongoing involvement in this matter. The Court believes it would be beneficial to the Court to understand the parties' respective views on outstanding actions, and the appropriate legal standard by which the Court may ensure an equitable end to its jurisdiction without leaving the *Jensen* lawsuit an empty promise.

Thus, based upon the entire record before the Court, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

The Court's amended agenda for the April 16, 2019 Status Conference is outlined below. The Court reserves the right to request written submissions from the parties on the topics identified below following the April 16, 2019 Status Conference.

1. **Call to Order**
2. **Introductions**
3. **Overview by the Court**
4. ***Olmstead* Plan Implementation¹**
 - a. Defendants shall report on the current status of the *Olmstead* Plan's implementation in light of the following reports which have been submitted to the Court since the July 12, 2018 Status Conference:
 - i. *Olmstead* Subcabinet Quarterly Report on *Olmstead* Plan Measurable Goals, Reporting Period: Data Acquired Through October 31, 2018 (filed on November 27, 2018). ([Doc. No. 705.](#))
 - ii. *Olmstead* Subcabinet Annual Report on *Olmstead* Plan Implementation, Reporting Period: Data Acquired Through October 31, 2018 (filed on December 24, 2018). (Doc. No. 706.)
 - iii. *Olmstead* Subcabinet Quarterly Report on *Olmstead* Plan Measurable Goals, Reporting Period: Data Acquired Through January 31, 2019 (filed on February 27, 2019). ([Doc. No. 708.](#))

¹ Although it is identified separately here for the purpose of status review, the Court notes that the “*Olmstead* Plan Implementation” is required by the Comprehensive Plan of Action (EC 79) and subsequent court orders.

- b. To accomplish item 4.a., Defendants shall identify individuals with knowledge to report on actions they have completed or efforts they have made with respect to the *Olmstead* goals, along with presentations by Defendants' counsel, if any.
- c. The Court also seeks a thorough presentation on the Quality of Life Survey results and the First Follow-Up Quality of Life Study results, including public response to the results, continued areas of concern, and next steps in the process.
- d. Following Defendants' presentation on the *Olmstead* Plan, Plaintiffs' Class Counsel and the Consultants may provide comments or observations on these topics.

5. *Olmstead* Plan – March 2019 Revision

- a. Defendants shall report to the Court on the revised *Olmstead* Plan. ([Doc. No. 725.](#)) Defendants shall identify the amendments included in this version of the *Olmstead* Plan, explain the rationale for these amendments, including any adjustment to goals, and describe how public input was incorporated into the changes.
- b. Following Defendants' presentation of item 5.a., above, Plaintiffs' Class Counsel and the Consultants may provide comments or observations on this [topic.](#)

[6.](#) Brief Recess

7. ***Jensen Settlement Agreement & Comprehensive Plan of Action***

- a. Defendants shall report on the current status of compliance with the *Jensen Settlement Agreement* (“JSA”) and Comprehensive Plan of Action (“CPA”) in light of the following reports which have been submitted to the Court since the July, 2018 Status Conference, but with particular emphasis on the March 2019 Summary Report:
 - i. *Jensen Settlement Agreement Comprehensive Plan of Action* (CPA) August 2018 Semi-Annual Compliance Report, Reporting Period January 1, 2018 – June 1, 2018 (filed on August 31, 2018). ([Doc. No. 700.](#))
 - ii. *Jensen Settlement Agreement Comprehensive Plan of Action* (CPA) March 2019 Summary Report (filed on March 19, 2019). (Doc. Nos. 710, 712, 717-23.)
- b. To accomplish item 7.a., Defendants shall identify individuals with knowledge to report on actions they have completed or efforts they have made, along with presentations by Defendants’ counsel, if any.
- c. In reporting to the Court on item 7.a., Defendants shall identify notable areas of success and areas in need of improvement. Defendants shall specifically address the following concerns and describe actions that will be taken to improve performance before December 2019: (1) external verification of compliance; (2) documentation of use of data to inform policy decisions, and

documentation of any such policy decisions, specifically with respect to: (a) wait times for admission to MLB housing; (b) wait times for movement to community placements after placement criteria have been met; and (c) under EC 88, the needs assessment(s) regarding the number of treatment homes; (3) continued use of restraint and seclusion, and documentation supporting compliance with EC 104; (4) the use of person-centered planning; and (5) the electronic data management system to track all information relevant to abuse/neglect investigations.

- d. Following Defendants' presentation on the JSA and CPA, Plaintiffs' Class Counsel and the Consultants may provide comments or observations on these topics.

8. **Plaintiffs' request for an evidentiary hearing and involvement of the Court Monitor. ([Doc. No. 730.](#))**

9. **Appropriate Legal Standard to Govern the Court's Involvement**

- a. Counsel for the parties shall apprise the Court of their views on the appropriate legal standard the Court should use to determine the circumstances under which it will end its involvement in this matter, including their views on the specific actions that remain outstanding.

10. **Next Steps.**

Date: April 15, 2019

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge