



STATE OF MINNESOTA

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September 5, 2019

VIA CM/ECF PURSUANT TO DOC. 761

The Honorable Donovan W. Frank
Senior U.S. District Judge, District of Minnesota
United States District Court
724 Warren E. Burger Federal Building
and U.S. Courthouse
316 North Robert Street, Suite 724
St. Paul, MN 55101

**Re: *James and Lori Jensen, et al. v. Minnesota Department of Human Services, et al.*
U.S. District Court File No. 09-CV-01775-DWF-BRT**

Dear Judge Frank:

Pursuant to the Court's order of August 30, 2019 ([Doc. 761](#)) ("Order"), State Defendants ("Defendants") write in response to Plaintiffs' September 4, 2019 letter regarding their late-filed August 28, 2019 brief ([Doc. 756](#)) ("Amended Brief"). Plaintiffs' letter does not provide information sufficient to excuse this late filing, and the Amended Brief should be stricken as Defendants requested in their August 29, 2019 brief. [Doc. 759, p. 2 n.1.](#)

First, Plaintiffs confirm that they did not ask permission to file the Amended Brief. [Doc. 770, p. 1.](#) Accordingly, they must show they "failed to act because of excusable neglect." [Fed. R. Civ. P. 6\(b\)\(1\)\(B\).](#) However, while acknowledging that they "should have sought permission to file the amendment," Plaintiffs only explain their late filing by stating that "[a]fter filing the original position . . . we discovered archived information that we felt provided additional context helpful to the Court's disposition of the issues." [Doc. 770, p. 1.](#) While this explains that Plaintiffs initially neglected to locate certain information they later wanted to include, it does not explain the reasons for this neglect, or why it is "excusable," as required. *See also* [Doc. 761](#) (ordering Plaintiffs to "show[] why their untimeliness should be excused.").¹

¹ This is the second time recently that Plaintiffs have submitted an amended version of a previous filing without asking permission. Plaintiffs first submitted a response to Defendant's Summary Report on April 9, 2019 ([Doc. 728](#)), and an amended version adding a net of about two pages on April 11, 2019 ([Doc. 730](#)). While both versions were submitted before the applicable filing deadline, *see* [Doc. 707, p. 13](#), Defendant is unaware of any authority permitting this practice.

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Second, Plaintiffs state that the Court should accept the Amended Brief because Defendants have “submitted unauthorized and late-filed information over the years.” Doc. 770, p. 2. But Plaintiffs’ only purported example of the Court accepting a late filing by Defendants relies on indisputably incorrect facts. Plaintiffs state that Defendants filed an April 12, 2019 letter requesting an additional status conference agenda item (Doc. 731) “without permission,” but the Court expressly invited that submission. Doc. 729, p. 3 (ordering, on April 9, 2019, that “[n]o later than Friday, April 12, 2019, the parties or the Consultants may submit additional proposed agenda items for the Court’s consideration.”).²

Finally, Plaintiffs ask the Court to accept the Amended Brief because the additional information it provides “is beneficial to the Court’s determination of the issues.” Doc. 770, p. 2. Plaintiffs cite no authority that this excuses late filing, nor do they address the obvious prejudice to Defendants of adding ten pages of argument one day before Defendants were required to respond. Instead, Plaintiffs use the second paragraph of their letter to submit even more untimely argument that Defendants must show substantial compliance and completely prohibit mechanical restraint. Doc. 707, pp. 1-2.

Defendants respectfully ask that both the Amended Brief, and the argumentative portion of Plaintiff’s September 4, 2019 letter, be stricken.

Sincerely,

s/ Aaron Winter

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² Plaintiffs also cite the Court’s March 19, 2015 order as an example of Defendants’ “unauthorized and late-filed information,” Doc. 770, p. 2, but in that order the Court concluded Defendant had asked for certain relief too late, and denied the request. Doc. 400, p. 5. This decision supports striking the Amended Brief. The other documents Plaintiffs cite do not appear to relate to unauthorized or late filings by Defendants. See Doc. 770, p. 2.