UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents, Guardians and next friends of Bradley J. Jensen, *et al.*, Civil No. 09-1775 (DWF/FLN)

Plaintiffs

v.

Minnesota Department of Human Services, an agency of the State of Minnesota, et al.,

Defendants

MONITOR RESPONSE TO ORDER OF MARCH 19, 2013

David Ferleger Archways Professional Building 413 Johnson Street, Suite 203 Jenkintown, PA 19046 Phone: (215) 887-0123

Fax: (215) 887-0133 david@ferleger.com

Independent Consultant and Monitor

By Order of March 19, 2013 (Dkt. 204), the Court ordered "the parties to submit within 14 days a proposed budget for David Ferleger that also addresses his role." The parties did not submit a joint response on the "scope of the role and responsibilities of Mr. Ferleger and/or a budget." *Id.* The parties responded separately. The Court requested the monitor to respond to their submissions.

I. Budget

A. Parties' Responses

Defendants propose a "budgeted monthly amount not to exceed \$12,000 [\$144,000 annualized] should be enough to compensate Mr. Ferleger." The Department notes that is "aware that there could be months when Mr. Ferleger will need to incur additional time," above its "hope" that actual expense will be below \$10,000. Defendants state that "Deputy Commissioner Anne Barry will discuss the budget issue directly with Mr. Ferleger in an effort to reach agreement without further involvement of the Court."

Plaintiffs suggest that "DHS and Mr. Ferleger should negotiate a mutually agreeable budget" for the Court's approval.² On the amount, Plaintiffs state:

The budget should be an amount sufficient to ensure appropriate monitoring of the Settlement Agreement and protection of the Settlement Class consistent with the Settlement Agreement, all Orders of the Court relating to compliance and monitoring of the Settlement Agreement and protection of Class Members, and the specified process for monitoring compliance as set forth in the parties' joint Stipulation or other process as determined by the Court.

B. Monitor's Comment

Defendants letter does not state any basis for the \$144,000 proposal (up from the previous \$100,000 suggestion), nor do they suggest any allocation between monitor time/expenses and that for outside specialist consultation.

1

¹ Defendants' letter to the Court, April 2, 2013, Attachment A hereto.

² Plaintiffs' letter to the Court, April 2, 2013, Attachment B hereto.

The monitor believes that Defendants' proposal is insufficient to meet the needs described by Plaintiffs, and the concerns of the Court as expressed in recent orders. It is progress that Defendants now acknowledge that a base estimated monthly cost will sometimes be exceeded, and that Defendants do not state that the proposal includes outside specialist consultants. The monitor looks forward to discussion with Ms. Barry in an effort to resolve this issue without the need for further Court involvement.

II. Monitor Role and Responsibilities

A. Parties' Responses

Defendants did not discuss the monitor's "role and responsibilities." Plaintiffs also did not discuss that topic, except to the extent generally set forth in the quotation above on the budget.

Defendants evidently intend that the Court further establish or clarify the monitor's role ("... once the Court further establishes or clarifies Mr. Ferleger's ongoing role," Ms. Barry will discuss the budget with him).

B. Monitor's Comment

The parties have not agreed on the "scope of the role and responsibilities of Mr. Ferleger," *see* Order of March 19, 2013.

The role/responsibilities question arose only because – without a motion or other pleading – the parties submitted (but did not docket) a stipulation proposing to eliminate the monitor's role/responsibilities under the Order of July 17, 2012 (Dkt. 159). The Court has not approved that stipulation.

As the monitor has previously observed, and as is evident in the parties' submitted stipulation, he and the parties are in agreement that a major focus should be on

reporting on compliance. The appointment Order of July 17, 2012 (Dkt. 159), together with any additional guidance the Court provides, permits that focus and already states the "scope of the role and responsibilities of Mr. Ferleger."

Respectfully submitted,

/s/ David Ferleger
David Ferleger
Archways Professional Building
413 Johnson Street
Jenkintown, PA 19046
Phone: (215) 887-0123

Independent Consultant and Monitor

Date: April 5, 2013



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

April 2, 2013

SUITE 1100 445 MINNESOTA STREET ST. PAUL, MN 55101-2128 TELEPHONE: (651) 282-5700

Via Email To Chambers With Permission frank chambers@mnd.uscourts.gov

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

Re: James and Lori Jensen, et al. v. Minnesota Department of Human Services,

File No. 09-CV-01775 DWF/FLN

Dear Judge Frank:

I write to address the Court's March 19, 2013 Orders [Doc. Nos. 204 & 205], that, among other things, (1) direct the parties to submit within 14 days a proposed budget for David Ferleger that also addresses his role, and (2) direct Deputy Commissioner Anne Barry to meet with Mr. Ferleger once the Court has established Mr. Ferleger's role.

The parties discussed the first matter. It is the Department's understanding that the Plaintiffs continue to take no position on Mr. Ferleger's budget. Consistent with discussions at last Monday's chambers conference about Mr. Ferleger's role as Court Monitor and External Reviewer, the Department proposes a budgeted monthly amount not to exceed \$12,000 should be sufficient to compensate Mr. Ferleger. Although the Department is hopeful that Mr. Ferleger's actual expenses will be less than \$10,000 per month, it is aware that there could be months when Mr. Ferleger will need to incur additional time. In proposing this budget, the Department anticipates that the current process by which Mr. Ferleger submits his monthly bill, affording the parties the right to review and object, will continue.

Regarding the second matter, and as further contemplated by the Court's second Order and Memorandum dated March 19, 2013 [Doc No. 205], once the Court further establishes or clarifies Mr. Ferleger's ongoing role, Deputy Commissioner Anne Barry will discuss the budget issue directly with Mr. Ferleger in an effort to reach agreement without further involvement by the Court.



The Honorable Donovan W. Frank April 2, 2013 Page 2

If the Court has questions or would like additional information, please do not hesitate to contact Steve Alpert or me.

Sincerely,

s/ Scott H. Ikeda SCOTT H. IKEDA Assistant Attorney General Manager, Social Services Division Atty. Reg. No. 0386771 (651) 757-1385 (Voice) (651) 282-5832 (Fax)

Attorney for Defendants Minnesota Department of Human Services and State of Minnesota

cc. Shamus O'Meara, Plaintiffs' Counsel (via email only)
Annie Santos, Plaintiffs' Counsel (via email only)
David Ferleger (via email only)
Amy Akbay, General Counsel, Minnesota Department of Human Services
Anne Barry, Deputy Commissioner, Minnesota Department of Human Services
Gregory Gray, Chief Compliance Officer, Minnesota Department of Human Services

CASE 0:09-cv-01775-DWF-BRT Document 208-2 Filed 04/08/13 Page 1 of 2 Monitor Role

O'MEARA LEER WAGNER KOHL Attorneys at Law P.A.

April 2, 2013

VIA CHAMBERS EMAIL WITH PERMISSION

The Honorable Donovan W. Frank United States District Court - District of Minnesota Warren E. Burger Federal Building 316 North Robert Street St. Paul, MN 55101

Re:

Jensen et al v. Minnesota Department of Human Services et al

Court File No: 09-CV-1775 DWF/FLN

Our File No.: 7400-001

Dear Judge Frank:

In response to the Court's March 19, 2013, Order and Memorandum [Doc. No. 204], and March 25, 2013, Chambers Conference, the Settlement Class respectfully requests reconsideration of the proposed process set forth in the joint Stipulation submitted to the Court on February 4, 2013 and denied on March 19, 2013 [Doc. No. 205], regarding the role of Mr. David Ferleger and the process to monitor compliance with the Settlement Agreement.

With regard to the budget for Mr. Ferleger, we believe DHS and Mr. Ferleger should negotiate a mutually agreeable budget to be submitted and approved by the Court. The budget should be an amount sufficient to ensure appropriate monitoring of the Settlement Agreement and protection of the Settlement Class consistent with the Settlement Agreement, all Orders of the Court relating to compliance and monitoring of the Settlement Agreement and protection of Class Members, and the specified process for monitoring compliance as set forth in the parties' joint Stipulation or other process as determined by the Court.

Thank you.

Respectfully submitted,

O'MEARA, LEER, WAGNER & KOHL, P.A.

s/ Shamus P. O'Meara

Shamus P. O'Meara M. Annie Santos SPO:MAS:tlb

SHAMUS P. O'MEARA

Hachment B

dd: 952.806.0438 fax: 952.893.8338

Attorney at Law

e: SPOMeara@olwklaw.com

The Honorable Donovan W. Frank April 2, 2013 Page 2

Via Email Only

cc: Mr. Steve Alpert, Attorney General's Office

Mr. Scott Ikeda, Attorney General's Office

Ms. Amy Akbay, Department of Human Services

Dr. Colleen Wieck, Minnesota Governor's Council on Developmental Disabilities

Ms. Roberta Opheim, Ombudsman for Mental Health and Developmental Disabilities

Mr. David Ferleger