

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,

Plaintiffs,

v.

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 State of Minnesota,

Defendants.

Court File No.: 09-cv-01775-DWF-BRT

**PLAINTIFFS' PROPOSAL FOR
REPORTING ON OLMSTEAD PLAN**

Plaintiffs respectfully submit this Proposal for Reporting on Olmstead Plan as directed by the Court. Following mediation sessions between the parties, Plaintiffs' counsel understands that DHS met with the Consultants (with the agreement of Plaintiffs) to develop a proposed Stipulation concerning reporting requirements for this matter. Following DHS discussions with the Consultants, DHS provided a proposed Stipulation, which Plaintiffs' counsel has edited and is enclosed as Exhibit A. Plaintiffs' counsel did not participate in the negotiation of the reporting dates or other reporting terms involved in the proposed DHS Stipulation, but has conveyed to DHS counsel that Plaintiffs' agreement to the proposed Stipulation is conditioned on the Consultants' agreement with the proposed Stipulation.

Plaintiffs' counsel recently received concerns from the Ombudsman regarding the proposed Stipulation and has communicated those concerns to DHS counsel. Plaintiffs' counsel has edited the DHS proposed Stipulation to reaffirm that Plaintiffs' agreement to the proposed Stipulation is expressly conditioned on the Consultants' agreement to the Stipulation and addressing other concerns expressed by the Ombudsman.

Respectfully submitted,

O'MEARA, LEER, WAGNER & KOHL

/s/ Shamus P. O'Meara

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ATTORNEYS FOR PLAINTIFFS

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**STIPULATION FOR OLMSTEAD
PLAN COMPLIANCE REPORTING**

STIPULATION

This Stipulation, including its attached Exhibit A [pending from DHS following vote of Olmstead Subcabinet] which is incorporated by this reference, is entered into by and among the Plaintiffs, through their undersigned counsel, and by Defendant Minnesota Department of Human Services ("Parties"). Subject to Court approval, and as provided herein, the Parties stipulate and agree that, in consideration of the promises and covenants set forth herein and upon the entry by the Court of an Order approving this Stipulation and the occurrence of the Effective Date, this Stipulation together with the terms and conditions contained herein shall serve as the basis for all Actions related to Olmstead Plan compliance reporting.

Deleted: on behalf of themselves and each of the Settlement Class Members

1. RECITATIONS

1.1. WHEREAS, on December 5, 2011, the Court issued a Final Approval Order for Stipulated Class Action Settlement Agreement (Doc. No. 136), approving the Settlement Agreement (Doc. No. 104), which stated that the "State and the Department shall develop and implement a comprehensive *Olmstead* plan"

1.2. WHEREAS, in an Order and Memorandum issued on April 23, 2013 (Doc. No. 211) and in an Amended Order and Memorandum issued on April 25, 2013 (Doc. No. 212), the Court directed that:

1.2.1. "The Monitor will independently investigate, verify, and report on compliance with the Settlement Agreement and the policies set forth therein on a quarterly basis;" and

1.2.2. "Those quarterly reports shall inform the Court and the parties whether the Monitor believes, based upon his investigation, without relying on the conclusion of the DHS, that Defendants are in substantial compliance with the Settlement Agreement and the policies set forth therein" and "shall set forth whether the DHS is operating consistent with the best practices pursuant to the Settlement Agreement."

1.3. WHEREAS, in its Amended Order and Memorandum issued on August 28, 2013 (Doc. No. 224), the Court directed that:

1.3.1. By November 1, 2013, "the State and the DHS shall submit a proposed Implementation Plan within the *Olmstead* Plan;"

1.3.2. “The *Olmstead* Plan shall also include a separate chronological timetable of tasks and deadlines to facilitate tracking and reporting and for regular updates to the Court setting forth the status and progress in implementation;”

1.3.3. “Updates to the *Olmstead* Implementation Plan shall include activities undertaken pursuant to the Plan, documentation of such activities, and any requests for modification of the Plan’s deadlines or other elements;” and

1.3.4. “Any requests for modification of . . . the Plans’ deadlines or other elements, shall be in writing, for good cause shown, and shall, in the first instance, be addressed and resolved by the Court Monitor, subject to review by the Court on written application by any party.”

1.4. WHEREAS, in an Order issued on January 22, 2014 (Doc. No. 265), the Court provided direction for adherence to timelines, formats for reporting, and ongoing implementation of the *Olmstead* Plan as follows:

1.4.1. “The State of Minnesota shall file its first update, including any amendment to the *Olmstead* Plan and a factual progress report that shall not exceed 20 pages, within 90 days of the date of this Order;”

1.4.2. “As the Court ordered on August 28, 2013, updates to the *Olmstead* Implementation Plan shall include activities undertaken pursuant to the Plan, documentation of such activities, and any requests for modification of the Plan’s deadlines or other elements;” and

1.4.3. “. . .the Court respectfully directs that the *Olmstead* Subcabinet cooperate, communicate, and work with the Court Monitor. The Court expects the *Olmstead* Subcabinet to discuss ongoing implementation with the Court Monitor, as well as the Executive Director of the Governor’s Council on Developmental Disabilities and the Ombudsman for Mental Health and Developmental Disabilities, on a 60-day report system, with feedback and communication between all parties . . .”

1.5. WHEREAS, in an Order issued on September 3, 2014 (Doc. No. 340), the Court provided direction regarding the role of the Court Monitor with respect to compliance reporting:

1.5.1. “The Court Monitor shall make findings of compliance concerning the Defendants’ activities under . . . the *Olmstead* Plan . . . In addition, the Court Monitor shall make recommendations that will facilitate the goals and objectives

of the Court's Orders, including recommendations for contempt, sanctions, fines or additional relief;"

1.5.2. "The Court Monitor may continue to issue reports on compliance and other issues in this case in his discretion; in light of the requirements in this Order, quarterly compliance reports by the Court Monitor are no longer required. [...] The Court Monitor shall also continue to issue reports on compliance and other issues in this case at his discretion;"

1.5.3. "The Court Monitor has the authority necessary to facilitate and assist Defendants to achieve substantial compliance with Defendants' obligations under the Court's Orders;"

1.5.4. "The Court Monitor shall:

- a. Oversee the timely implementation of all procedures and activities related to all outstanding obligations under the Court's Orders.
- b. Oversee the activities of the Defendants in order to ensure and affirm that the service system provides services and support that comply with the Court's Orders.
- c. Oversee the activities of the Defendants, including their oversight and monitoring, in order to ensure that their supervision and regulation of counties, contractors, providers, and agents results in substantial compliance with the Court's Orders.
- d. Oversee the activities of the Defendants related to their communications with other state agencies necessary to achieve substantial compliance with the existing Court's Orders.
- e. Review existing data collection mechanisms, information management, performance standards, provider review, and quality improvement systems, and, if necessary, identify specific improvements to achieve substantial compliance with the Court's Orders.
- f. Supervise compliance activities by the Defendants with respect to the Court's Orders.
- g. Facilitate efforts of the Defendants to achieve substantial compliance with the Court's Orders at the earliest feasible time.
- h. Evaluate the adequacy of current activities and the implementation of remedial strategies to facilitate substantial compliance with the existing Court's Orders.
- i. Propose to the Court actions that could be taken to more rapidly achieve substantial compliance, including the need for any additional Court Orders. In developing these actions, to the extent the Court Monitor deems appropriate, he may: (1) Develop specific outcome measures or standards of compliance for those areas in which such outcome measures or standards would assist in the

determination of substantial compliance; (2) Encourage and allow the Defendants in the first instance to propose timelines, outcome measures, or standards of compliance, should they desire to do so; and (3) Include, when he deems appropriate, timetables for implementation, descriptions of measures necessary to bring the Defendants into substantial compliance or to overcome obstacles to substantial compliance;" and

1.5.5. "The Court Monitor may make formal, written recommendations if the Court Monitor: (a) determines that any action necessary to achieve substantial compliance with an outstanding obligation under the Court's Orders is not being implemented or is inadequately implemented; (b) finds that Defendants are violating any provision of the Court's Orders; or (c) acts on a party's submission or a *sua sponte* consideration of a dispute. Such recommendations shall include consideration of the appropriateness of contempt, sanctions, fines, or additional relief. Such recommendations may also include timetables for implementation and descriptions of measures necessary to bring the Defendants into substantial compliance or to overcome obstacles to substantial compliance."

1.6. WHEREAS, in an Order issued on September 18, 2014 (Doc. No. 344), the Court directed that:

1.6.1. "[T]he State must ensure accurate progress reporting. Reports to the Court must be accurate, complete, and verifiable;" and

1.6.2. "The Court requires the State to report on the following: (1) the number of people who have moved from segregated settings into more integrated settings; (2) the number of people who are no longer on the waiting list; and (3) the quality of life measures. With respect to the first inquiry, any calculation must consider admissions, readmissions, discharges, and transfers—reflecting the dynamic movement of individuals through segregated settings—to determine the net number of people who have moved into more integrated settings. Regarding the second inquiry, the State must evaluate whether the movement is at a reasonable pace. Finally, with respect to the third inquiry, the State must summarize and submit to the Court any available data and highlight any gaps in information."

1.7. WHEREAS, in an Order issued on September 29, 2015 (Doc. No. 510), the Court approved the State's Olmstead Plan, which includes a section on Plan Management and Oversight and assigns responsibility for quality assurance and accountability, and compliance evaluation, verification and oversight to the Olmstead Subcabinet and the Olmstead Implementation Office.

1.8 WHEREAS, in an Order issued on November 6, 2015 (Doc. No. 521), the Court stated that, “In a subsequent Order, the Court will identify a reporting schedule for the State to submit periodic reports to the Court on the *Olmstead* Plan’s implementation.”

2. NOW, THEREFORE, the Plaintiffs and the Settlement Class, through their counsel, and the Minnesota Department of Human Services hereby stipulate and agree as follows:

2.1. As used in this Stipulation and Exhibit A, in addition to any definitions elsewhere in the Stipulation, the following terms shall have the meanings set forth herein:

2.1.1. “Department” means the Minnesota Department of Human Services;

2.1.2. “Quarterly reporting” means reporting on the progress towards the Olmstead Plan’s measurable goals by the Olmstead Implementation Office during a fixed three-month period.

2.2. The Department shall file with the Court and submit to Plaintiffs’ Class Counsel and the Consultants quarterly status reports and annual reports regarding Olmstead Plan implementation as produced by the Olmstead Implementation Office and approved by the Olmstead Subcabinet based on the schedule listed in the attached **Exhibit A** entitled “Quarterly Reporting Schedule for Olmstead Plan Measurable Goals.”

2.2.1. The initial quarterly status report shall include data acquired by the Olmstead Implementation Office through the last day of January 2016, and shall be due on February 29, 2016.

2.2.2. Thereafter, quarterly reporting shall occur according to the following schedule:

2.2.2.1. First Quarter (data acquired by the Olmstead Implementation Office through the last day of April) quarterly status report due date May 31.

2.2.2.2. Second Quarter (data acquired by the Olmstead Implementation Office through the last day of July) quarterly status report due date August 31.

2.2.2.3. Third Quarter (data acquired by the Olmstead Implementation Office through the last day of October) quarterly status report due date November 30.

2.2.2.4. Fourth Quarter (data acquired by the Olmstead Implementation Office through the last day of January) quarterly status report due date February 28, or, in the case of a leap year, February 29.

2.2.3. Annual reports shall cover data acquired by the Olmstead Implementation Office during the period of October 1 through September 30 and shall be due on or before the following November 30.

2.2.4. When the reporting date is a Saturday, Sunday, or a legal holiday, the reporting shall be effected on the next day that is not a Saturday, Sunday, or legal holiday, as provided in [Federal Rule of Civil Procedure 6\(a\)\(1\)\(C\)](#).

2.2.5. The Department shall consult with Plaintiffs' Class Counsel when changes to the reporting schedule are needed.

3. THE DEPARTMENT PROPOSES that prior Orders of the Court related to ongoing compliance reporting (Doc. Nos. 136, 211, 212, 224, 265, 340, and 344) are superseded by the Court's Order approving this Stipulation.

4. THE PLAINTIFFS, THROUGH THEIR COUNSEL, RESPECTFULLY PROPOSE that prior to the Court's Order on this Stipulation, the Court consult with the Independent Court Monitor and Consultants about the role of the Independent Court Monitor going forward as Plaintiff's counsel has received concerns about the absence of the Independent Court Monitor in the Stipulation and how the rights of people with disabilities will be protected knowing the Ombudsman's office is not staffed or funded to take on that role.

5. THE PLAINTIFFS, THROUGH THEIR COUNSEL, RESPECTFULLY PROPOSE:

The State of Minnesota, as a signatory to the Stipulated Class Action Settlement Agreement (Doc. No. 136), remains bound to the terms of the Agreement and all related Court Orders.

6. Plaintiff's agreement to the terms of this Stipulation are expressly conditioned on the Consultants' full agreement to the terms of this Stipulation.

[SIGNATURE PAGE TO FOLLOW]

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