

**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.

On December 18, 2019, the Court ordered the parties to meet and confer to select an individual to conduct an external review of the Forensic Mental Health Program (“FMHP”) (formerly, the Minnesota Security Hospital) and Anoka Metro Regional Treatment Center (“AMRTC”) to address the extent to which Defendants’ use of mechanical restraint reflects current best practices. ([Doc. No. 779](#) (“December Order”) at 16-17.) In the event that the parties were unable to agree, the Court directed each party to nominate two individuals they would like to conduct the external review and advised that the Court would then select an external reviewer and notify the parties. (*Id.* at 16.)

The parties were unable to agree on an external reviewer. Per the Court’s direction, each party nominated two individuals via email. Plaintiffs nominated Dr. Gary LaVigna (“LaVigna”) and David Ferleger (“Ferleger”). In response to the Court’s June 17, 2019 Order ([Doc. No. 737](#)), Defendants engaged LaVigna to conduct an external review on the use of prohibited techniques at Minnesota Life Bridge homes. (*See* [Doc. No. 775](#).) LaVigna also advised on a matter in 2015 (*See* [Doc. No. 464](#)), and was identified by Defendants as a subject matter expert. ([Doc. No. 377](#).) Ferleger was appointed Court Monitor in 2012.¹ ([Doc. No. 159 at 10](#).) Ferleger is well-acquainted with the above-entitled matter and has submitted numerous reports over the years,

¹ In April 2013, the Court ordered that the role of the Court Monitor subsume the External Reviewer function set forth in Section VII.B. of the Settlement Agreement because that function had remained unfilled. ([Doc. No. 212 at 6](#).) In September 2014, the Court increased the Court Monitor’s responsibilities to: (1) oversee Defendants and ensure their accountability; and (2) expedite prompt and meaningful compliance. ([Doc. No. 340 at 8-9, 14](#).) The Court Monitor’s duties have been stayed since January 2017; however, the Court reserved the right to reengage the Court Monitor to investigate or verify other issues that may arise. ([Doc. No. 612 at 3](#).)

including one that specifically addressed the use of restraint and seclusion at FMHP and AMRTC. (*See* [Doc. No. 236](#); *see also*, Doc. Nos. 236, 327, 347, 374, 388, 414, 604.)

Defendants nominated two individuals who, despite being well-credentialed, lack any experience with the above-entitled manner. In light of its substantial history, the Court finds that it is economically prudent and in the interest of efficiency to engage an external reviewer already familiar with this matter. Accordingly, the Court directs Defendant to select either LaVigna or Ferleger to conduct the external review of FMHP and AMRTC.

ORDER

Based upon the presentations and submissions before the Court, and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. Defendants must select either Dr. Gary LaVigna or David Ferleger to conduct an external review of the Forensic Mental Health Program and Anoka Metro Regional Treatment Center pursuant to the Court's December 18, 2019 Order.
2. Defendants shall notify the Court of their selection via email no later than February 7, 2020.
3. The external reviewer shall conduct an external review and submit a report in accordance with the obligations set forth in the Court's December 18, 2019 Order (Doc. No. ([779])).

Dated: February 4, 2020

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