

October 7, 2015

Amy Akbay
Chief Counsel
Department of Human Services
444 Lafayette Rd.
St. Paul, MN 55155

Re: Review of Invoices Submitted by the *Jensen* Settlement
Agreement Court Monitor and *Karsjens* Litigation Technical
Advisor, Audit Report number: ASR 2015-16

Dear Ms. Akbay,

Thank you for the audit report dated September 29, 2015 regarding expense reimbursement. You provided the report to me yesterday, October 6. I had not seen a draft of the report previously. Thus, I was not provided an opportunity to correct errors in the report just issued.

DHS agrees that there are “no issues” with all the consultant’s rates and that DHS is satisfied with the consultants’ work.

After consultation with the Court, I write solely to correct major errors in the report. There is no need at this time to discuss other elements of the report.

Preliminarily and importantly, the audit report misleadingly and erroneously confuses the two lawsuits which it discusses. The report states that David Ferleger, who had a limited role in the *Karsjens* case, retained and hired the Court’s Rule 706 experts, and submitted their invoices. This is untrue as you agree in the “clarification” you issued after the original erroneous report was distributed to others. The facts are that the Rule 706 *Karsjens* experts were selected by DHS and the Plaintiffs, their cost was never billed by David Ferleger, was never reimbursed to him, and the experts were never assigned to his oversight.

1. The payment and review process are how DHS wanted it. In *Jensen*, DHS wanted and requested that the process be through the Court’s account, and requested that DHS not be responsible for writing checks and would not be responsible for any payments. With DHS’ agreement, the payment process in *Karsjens* was modeled after that in *Jensen*.

2. The payment and DHS review process were established with DHS consent. All payments were made after advance review by DHS of every detail in every billing. No payments were made without advance DHS review.
3. After advance notice and review of every invoice and expense, DHS decided not to object and thereby agreed to payment on court order. DHS never filed any objection to any invoice or expense.
4. The report fails to state that the DHS official responsible for approving the Court Monitor budget in *Jensen* specifically discussed and agreed to the \$1,800 “general expenses” reimbursement. This partial reimbursement was identified in the written budget, and that item was approved by DHS in advance, and paid without objection.
5. The report fails to state that \$15,000 fixed fee for a special evaluation at a \$15,000 cost was requested and approved by DHS. DHS wanted to avoid the delay of DHS contracting procedures. I agreed to DHS’ request. The consultation was for guidance for DHS regarding a client who was being held under deplorable conditions, not contested by DHS, in violation of the court’s orders.
6. For all consultant reviews, DHS was always aware of their identities, their expertise, and the anticipated costs for fees and expenses in *Jensen*. These were all documented in the budgets estimates shared with and approved by DHS. Total actual costs for the consultant reviews were lower than the budget estimates.

Thank you for your consideration.

Sincerely,

David Ferleger

Cc: Hon. Donovan W. Frank
Shamus O’Meara
Dr. Colleen Wieck
Roberta Opheim
Nate Brennaman
Scott Ikeda
Dan Gustafson
Ricardo Figueroa