

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Kevin Scott Karsjens, David Leroy Gamble,  
Jr., Kevin John DeVillion, Peter Gerard  
Lonergan, James Matthew Noyer, Sr.,  
James John Rud, James Allen Barber,  
Craig Allen Bolte, Dennis Richard Steiner,  
Kaine Joseph Braun, Christopher John  
Thuringer, Kenny S. Daywitt, Bradley Wayne  
Foster, Brian K. Hausfeld, and all others  
similarly situated,

Civil No. 11-3659 (DWF/JJK)

Plaintiffs,

v.

**ORDER**

Lucinda Jesson, Dennis Benson, Kevin  
Moser, Tom Lundquist, Nancy Johnston,  
Jannine Hébert, and Ann Zimmerman,  
in their individual and official capacities,

Defendants.

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E.T.,

Civil No. 14-2002 (DWF/JJK)

Petitioner,

v.

Lucinda Jesson, Commissioner of  
the Minnesota Department of  
Human Services,

Respondent.

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R.B.,

Civil No. 14-2362 (DWF/JJK)

Petitioner,

v.

Lucinda Jesson, Commissioner of  
the Minnesota Department of  
Human Services,

Respondent.

These matters are before the Court following a show cause hearing in the above-captioned class action and on petitions for habeas corpus filed by E.T. and R.B.

On May 18, 2014, the Rule 706 experts unanimously recommended that E.T. “be unconditionally discharged from MSOP.” (Doc. No. 468, Ex. 1 at 4.) On June 2, 2014, the Court ordered Defendants to show cause why E.T.’s continued confinement is not unconstitutional and why E.T. should not be immediately and unconditionally released from MSOP. (Doc. No. 468 at 4.) In a report dated June 4, 2014, the experts recommended that R.B. be transferred or provisionally discharged from MSOP “to a supervised treatment setting that can meet her special needs for treatment (e.g., sexual offending, personal victimization, trauma, mental health maintenance) that is gender responsive, trauma informed, and that provides for socialization opportunities and relationship development with other women.” (Doc. No. 481, Gustafson Decl. ¶ 3, Ex. A at 1.)

On June 4, 2014, Plaintiffs filed a motion seeking, in part, to immediately discharge E.T. from civil commitment. (Doc. No. 469.) Plaintiffs then filed a Motion to Immediately Transfer R.B. to an Appropriate Treatment Facility on June 9, 2014. (Doc. No. 478.) On June 25, 2014, the Court held a hearing pursuant to the order to show cause

and on Plaintiffs' motions regarding E.T. and R.B. Consistent with the Court's remarks from the bench, the Court sets an evidentiary hearing in the above-captioned matters and enters the following Order.

### **ORDER**

Based upon the foregoing, and the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. An evidentiary hearing in the above-captioned matters shall be held on July 14-15, 2014. The hearing shall commence at **9:00 a.m. on July 14, 2014** in Courtroom 7C, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.
2. All individuals who have issued reports regarding E.T. and R.B. in these matters shall be present to offer testimony at the hearing, unless otherwise agreed upon by the parties and approved by the Court.
3. Given that the relevant professionals have issued formal reports, which have been scrupulously reviewed by the parties, that those individuals (including the Court-appointed experts) will be available for extensive examination and cross-examination at the hearing, that counsel are well-versed in the relevant matters, and "in light of the desirability of reasonably limiting the demands to be made on the . . . experts' time," as well as the Court's discretion to manage the discovery process to minimize expense, delay, and waste, the inability of a party to depose any expert shall not serve as a basis for continuance of the evidentiary hearing. *See NEC Corp. v. Hyundai Elecs. Indus. Co., Ltd.*, 30 F. Supp. 2d 546, 561 n.3; *see also Smith v. Armontrout*, 604

F. Supp. 840 (W.D. Mo. 1985) (discovery via evidentiary hearing following submission of 706 expert's report).

4. The Court notes that formal depositions of the experts appear to be entirely unnecessary in this matter, and that pre-hearing depositions of any kind may be superfluous in light of the reports that have been issued. The parties may very well waive the right to depose under Rule 706 and consent to questioning all of the professionals for the first time at the July 14 hearing. Nevertheless, to the extent the parties seek to informally discuss the relevant reports with the experts, such depositions will be permitted. *See* Joe S. Cecil & Thomas E. Willging, Federal Judicial Center, *Court-Appointed Experts: Defining the Role of Experts Appointed Under Federal Rule of Evidence 706*, 93 n.220 (1993) (finding “formal depositions of appointed experts . . . to be infrequent, although on occasion an appointed expert [meets] informally with the parties to discuss the report”). The parties are instructed, however, that any such questioning shall be strictly limited in duration and scope and that the Court will not require the inquiries to be conducted in person.

5. Defendants/Respondent shall provide any applicable notice required by Minnesota statute on or before **July 2, 2014**.

6. To the extent necessary, limited discovery will be permitted and shall be completed by **July 7, 2014**.

7. The parties shall file their respective witness and exhibit lists on or before **July 10, 2014**.

8. Respondent shall file an answer to each habeas petition, showing cause why the requested writs should not be granted. Respondent's answers shall fully comply with the requirements of Rules 5(b), (c) and (d) of the Rules Governing Section 2254 Cases in the United States District Courts. The answers shall be filed with the Court on or before **July 7, 2014**, and a copy of the answers shall be served upon Petitioners simultaneously with such filing.

9. Petitioners shall file their replies to the answers on or before **July 10, 2014**.

Dated: June 27, 2014

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