

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DO NO HARM, INC., a nonprofit corporation,

Civil File No. 0:25-cv-00287
(KMM/JFD)

Plaintiff,

v.

RULE 26(f) REPORT

DR. BROOKE CUNNINGHAM, in her
official capacity as Commissioner of
the Minnesota Department of Health,

Defendant.

The party and counsel identified below participated in the meeting required by Fed. R. Civ. P. 26(f) and the Local Rules, on March 12, 2025, and prepared the following report.

Pursuant to the Court's February 24, 2025 Order (ECF 10), the Court scheduled a pretrial conference set for March 24, 2025, at 10:30 a.m.

DESCRIPTION OF CASE

1. Concise factual summary of the plaintiff's claims:

This is an action for declaratory and injunctive relief. Plaintiff claims that one of its members applied for a position on the Minnesota Health Equity Advisory and Leadership Council ("HEAL Council"), which is an advisory board that advises Defendant in order to assist the Minnesota Department of Health's ("MDH") strategic plan of advancing health equity in the state. Plaintiff alleges that Minn. Stat. § 145.987 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution based on an assertion that the statute requires Defendant to make decisions on the basis of race when making appointments to the HEAL Council. Plaintiff additionally claims that section 145.987 violates the Citizenship Clause of the Fourteenth Amendment to the United States Constitution.

2. Concise factual summary of the defendant's defenses:

Plaintiff lacks Article III standing, its claims are not ripe for judicial review, Plaintiff's complaint fails to state a claim upon which relief can be granted,

Plaintiff suffered no harm or damages as a result of the actions of Defendant, and Plaintiff's claims and causes of actions, in whole or in part, are barred Eleventh Amendment sovereign immunity. On the merits, Minn. Stat. § 145.987 is constitutional and does not violate the Fourteenth Amendment.

3. Statement of jurisdiction (including statutory citations):

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 and asserts this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

Defendant denies this Court has subject matter jurisdiction due to lack of Article III standing and lack of ripeness.

4. Summary of Factual Stipulations or Agreements:

None at this time, except for any admissions in Defendant's answer.

5. Statement of whether jury trial has been timely demanded by any party:

Not applicable.

6. Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

The parties do not agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota.

7. Has all process been served and have all pleadings been filed?

Yes

8. Does any party have plans to seek to amend the pleadings or add additional parties to the action, and if so, what are those plans?

At this time, neither party has plans to amend the pleadings or add a party.

FACT DISCOVERY

Having conferred about the unique needs of this case, and mindful of the goals of justice, efficiency, proportionality, and inexpensiveness, the parties recommend that the Court establish the following fact discovery deadlines and limitations:

1. The parties must make their initial disclosures required by Fed. R. Civ. P. 26(a)(1) on or before: **March 31, 2025**. If the parties plan to disclose documents by a description of category and location of documents, they will exchange copies of initial disclosure documents on or before **April 30, 2025**.
2. The parties must commence fact discovery in time to be completed by **December 1, 2025**.

The parties will discuss whether a date for the substantial production of documents should be set within the fact-discovery period to facilitate the taking of depositions.

3. The parties have discussed the scope of discovery, including relevance and proportionality, and propose that the Court limit the number of discovery procedures as follows:
 - a. No more than **25** interrogatories shall be served by each side.
 - b. No more than **25** document requests shall be served by each side.

The parties understand that objections to document requests must meet the requirements of amended Rule 34(b)(2)(B). If the responding party is producing copies of documents or copies of electronically stored information and the copies are not produced with the responses, another reasonable time must be specified in the response. If the requesting party disagrees that this is reasonable, the parties must meet and confer to agree on the timetable for production.

- c. No more than **25** requests for admission shall be served by each side.

The parties have discussed a protocol for the authentication of documents and agree on the following: **Documents produced by a party are authentic as against that party if it was produced from that party's files or if it was authored by that party or that party's agents, unless a party makes a showing of good cause to the contrary. Any request to admit the genuineness or authenticity of a document must be accompanied by a copy of the document or, if initially produced by the party from whom the admission is sought, by reference to the document's Bates number.**

- d. No more than **3** fact depositions shall be taken by each side. This total does not include expert depositions but does include depositions of

organizational-designee depositions taken pursuant to Fed. R. Civ. P. 30(b)(6). An organizational-designee deposition shall count as 1 deposition, irrespective of the number of witnesses designated.

- e. The parties have discussed the taking of depositions pursuant to Fed. R. Civ. P. 30(b)(6) and present the following agreement: **The party seeking a Rule 30(b)(6) deposition will serve its first notice at least 60 days before the deposition. The parties will then meet and confer on topics and attempt to reach agreement. To the extent the parties reach any agreements, the party seeking the Rule 30(b)(6) deposition will serve an amended notice reflecting those agreement(s) at least 30 days before the deposition.**

For Rule 30(b)(6) depositions of non-parties, the parties will “confer in good faith about the matters for examination.” Fed. R. Civ. P. 30(b)(6).

- f. The parties agree that no Rule 35 medical examinations will be completed.
- g. No other fact discovery agreements between the parties.

EXPERT DISCOVERY

1. The parties anticipate that they will not require expert witnesses at the time of trial, but reserve the right to retain an expert subject to the imposed deadlines.
2. In the event the parties require expert witnesses, the parties propose that the Court establish the following plan for expert discovery:
 - a. Initial experts
 - i. The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before **September 1, 2025**.
 - ii. The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before **October 1, 2025**.
 - b. Rebuttal experts

- i. The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before **October 1, 2025**.
 - ii. Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before **November 3, 2025**.
3. All expert discovery, including expert depositions, must be completed by **December 1, 2025**.

OTHER DISCOVERY ISSUES

1. Protective Order

The parties have discussed whether they believe a protective order is necessary to govern discovery and will jointly submit a **proposed protective order by April 15, 2025**. The parties intend to use the form order on the Court's website and will submit the agreed-on protective order (or a report noting areas of disagreement) and a redline showing deviations from the form order.

2. Discovery of Electronically Stored Information

The parties have discussed the scope of electronic discovery, including relevance and proportionality, and any issues about preserving potentially discoverable electronic information. The parties have also discussed the form or forms in which electronic discovery should be produced. They inform the Court of the following agreements or issues:

The parties agree to produce Microsoft Excel and PowerPoint files in native format. No other form of electronically stored information ("ESI") will be produced in native format absent a showing of reasonable and particularized need. The parties further agree to produce ESI in a unitized searchable PDF format with accompanying load files, and that documents will be produced separately and not in a combined "omnibus" PDF or similar format. Each document produced will be Bates labeled by the producing party. Privilege logs will be produced only upon request and after production is substantially complete.

The parties will further meet and confer regarding the search and review process(es) for ESI, including deduplication and the use of keyword searching.

The Court refers counsel to “Discussion of Electronic Discovery at Rule 26(f) Conferences: A Guide for Practitioners,” developed by the Federal Practice Committee, to help attorneys and parties prepare for a meaningful discussion of electronic discovery issues early in the litigation. The Guide is available on the Court’s website under the Court Forms tab, in the “Pretrial, Discovery, and Trial Forms” section. The Guide should be read in advance of the Rule 26(f) Conference.

The parties will further meet and confer by **April 15, 2025** to discuss their plan or formal protocol for electronic discovery. They agree to present any disputes regarding an electronic discovery plan and protocol to the Court by **April 30, 2025**.

3. Claims of Privilege or Protection

The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D). This discussion included whether the parties agree to a procedure to assert these claims after production or have any other agreements under Fed. R. Evidence 502. **The parties request the Court to include the following in the scheduling order: The parties agree to follow the procedure set forth in Fed. R. Civ. P. 26(b)(5)(B) regarding information produced in discovery that is subject to a claim of privilege or protection as trial preparation material. Pursuant to Fed. R. Evid. 502, the inadvertent production of any documents in this proceeding shall not constitute a waiver of any privilege or protection applicable to those documents.**

PROPOSED MOTION SCHEDULE

The parties propose the following deadlines for filing motions:

1. Motions seeking to join other parties must be filed and served by **April 30, 2025**.
2. Motions seeking to amend the pleadings must be filed and served by **April 30, 2025**.
3. Non-dispositive motions:

- a. All non-dispositive motions relating to fact discovery must be filed and served by **January 30, 2026**.
- b. All other non-dispositive motions, including motions relating to expert discovery, must be filed and served by **January 30, 2026**.

The parties must meet and confer to resolve all discovery disputes and other non-dispositive issues prior to filing any motions.

4. All dispositive motions must either be filed by, or filed and heard by, depending on the preferences of the district judge, **January 30, 2026**.

TRIAL-READY DATE

1. The parties agree that the case will be ready for trial on or after **June 8, 2026**.
2. The anticipated length of the bench trial is **2** days.
3. The parties propose the final pretrial conference be held on or before **30 days before the scheduled trial date**.

INSURANCE CARRIER/INDEMNITORS

List of all insurance carriers/indemnitors, including limits of coverage of each defendant or a statement that the defendant is self-insured:

Plaintiff: Not applicable

Defendant: The State is self-insured and has indemnified any employees of the Minnesota Department of Health.

SETTLEMENT

At the Rule 16 Scheduling Conference, Magistrate Judge Docherty will ask the parties for their views about the optimal timing of a settlement conference in this case.

TRIAL BY MAGISTRATE JUDGE

The parties have not agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c).

Dated: March 14, 2025

Respectfully submitted,

/s/ Brandon Beyer
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Dated: March 14, 2025

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