

MAP Legal News  
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MAP Legal Services provides advice, direct representation and referrals to a network of volunteer attorneys for HIV-related legal matters, including estate planning, family law, discrimination, social security, immigration and employment-related concerns. Participants must be HIV-positive, meet financial eligibility requirements and complete our legal intake process. MAP also provides brief consultation to HIV service providers and family members on HIV-specific legal topics. We hope you find this update informative and useful! If you have any comments or suggestions, please contact Caroline Palmer, Staff Attorney, at [cpalmer@mnaidsproject.org](mailto:cpalmer@mnaidsproject.org) or (612) 373-9174. If you do not wish to receive future editions of MAP Legal News, or if you would like your name added to the list, please contact Dan Kelly, Legal Services Assistant, at [dkelly@mnaidsproject.org](mailto:dkelly@mnaidsproject.org) or (612) 373-2426.

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### **Updates on HIV-related Case Law and Legal/Policy News**

We have no recent cases from the United States Supreme Court or the Minnesota District. Here are some interesting cases from Minnesota and the Eighth Circuit as well as cases from around the country:

*State of Minnesota v. Bailey*, File No. KX024139 (Minn. App. 9/14/2004): Steven Bailey was found guilty of second-degree manslaughter for the death of a man with whom he engaged in an “erotic knockout session” using chloroform and a gas mask. The state requested that the district court double the 48-month presumptive sentence; the court sentenced Bailey to 72 months, a 24 month upward departure based on public safety concerns, Bailey’s lack of remorse, and Bailey’s failure to accept responsibility for the death. During the appeal, the state claimed that the HIV-positive Bailey’s engagement in sexual activity support the court’s use of public safety as an aggravating factor. The Court of Appeals noted that the facts of the case involved two consenting adults and were different from the cases cited by the state in which defendants were convicted of first-degree criminal sexual conduct. Further, a defendant’s lack of remorse is not considered for durational departures. The Court concluded that Bailey’s behavior was not significantly different than “a typical second-degree manslaughter offense,” and reversed the lower court’s upward departure in sentencing. After this case was submitted the United States Supreme Court issued its *Blakely v. Washington* opinion that invalidated upward durational departures based on

aggravating factors determined by a judge rather than a jury. The Court did not use the *Blakely* decision for this case instead relying on state law, however Judge Minge, in his concurrence, argued for remand based on *Blakely*.

*Doe v. Baxter Healthcare Corp.*, No. 03-2651 (8<sup>th</sup> Cir., 8/24/2004): The Eighth Circuit dismissed a suit brought by John and Mary Doe, the parents of a hemophiliac child who was likely infected with HIV from blood products provided by various pharmaceutical companies. The U.S. District Court for the Southern District of Iowa ruled that the Does did not present sufficient evidence to create a genuine question of fact regarding causation and granted the defendant pharmaceutical companies' motion for summary judgment. The Eighth Circuit upheld the decision because the Does could not identify the moment of infection and prove that their son's damages would not have occurred but for a particular defendant's negligent actions. The Does were only able to approximate treatment dates and create a strong likelihood that one or another company had provided the factor VIII concentrate that infected their son. The plaintiff must be able to show that one of the defendants caused the injury in order to proceed. The Does also failed to include the manufacturers of cryoprecipitate (another treatment their son received)) as potential defendants; they demonstrated that the cryoprecipitate did not cause the infection but failed to create a genuine question of fact that it could not have caused the infection.

*Mellis v. New York State Dep't of Corrections*, 2004 N.Y. Slip Op. 06159 (N.Y. App. Div., 7/22/2004): Robert Mellis, an employee of the New York State Department of Corrections, tested positive for hepatitis C in 1988 during treatment for injuries received from an altercation with an inmate. He worked until 2001 and then filed a claim for workers' compensation benefits. The workers' compensation law judge concluded that Mellis was entitled to benefits because Hepatitis C qualified as an occupational disease. The insurer appealed and a panel of the Worker's Compensation Board reversed, holding that Mellis's claim was time-barred and that competent medical evidence had not been used to determine his claim for occupational disease. The New York Supreme Court Appellate Division affirmed, holding that Mellis failed to establish a link between his hepatitis C infection and his employment with the corrections department. His medical testimony conflicted. One of Mellis's doctors testified that a lacerated finger (from the altercation) could not have been the source of the infection because the disease has a six to eight month incubation period. Another doctor noted that Mellis could have contracted the infection from sexual contact while a third doctor claimed the hepatitis C came from exposure during employment.

### **MAP Legal Services Case of the Month**

Many creditors sue our low-income clients. Under Minn. Stat. §550.37 Subd. 14 (2003), individuals who receive public assistance are considered exempt from garnishment, attachment, and other punitive measures. The *Garnishment Exemption Notice* informs debtors that they can claim exemption because they received relief based on need and then lists the usual public assistance programs such as medical assistance. Many clients and their advocates mistakenly believe that only those receiving benefits under the listed programs are eligible to claim an exemption from garnishment. This is not true. "Relief based on need" has been broadly interpreted. In a recent case MAP Legal Services successfully asserted that enrollment in the DHS HIV/AIDS programs and that receipt of assistance from Every Penny Counts/AIDS

Emergency Assistance was relief based on need and therefore our client's earnings were exempt from garnishment.

### **New MAP Legal Services Staff: Warren Ortland**

Warren Ortland has joined MAP as an Equal Justice Works Fellow, receiving a two-year fellowship to work as the Legislative Research & Policy Coordinator in the Community Affairs and Education Department. Warren is a 2004 graduate of William Mitchell College of Law where he served for two years as the co-chair of the student chapter of the Minnesota Justice Foundation. Prior to law school, Warren worked for fifteen years for Xerox Corporation in a variety of positions. During his tenure at Xerox, Warren coordinated the Xerox Community Involvement Program for the local Xerox office, establishing programs and events to get local Xerox employees involved in their community through volunteering. Warren also received a seven-month leave of absence from Xerox in 1993 to work as the volunteer coordinator for the Minnesota AIDS Walk.

### **Minnesota AIDS Project Public Policy News**

Visit MAP's Web site to stay abreast of the new policy developments on the state, national and international levels at [www.mnaidsproject.org/policy/index.htm#heading01](http://www.mnaidsproject.org/policy/index.htm#heading01). You can also keep up with the latest developments in HIV policy news by signing up for email updates of the *MAP Advocate* at the site.

The *MAP Community Forum Series* continues October 18, 2004 with "What Parents and Teens Want [and Need]: Comprehensive Sexual Health Education" featuring James Wagoner, Advocates for Youth. The forum will take place at Kandiyohi County Health and Human Services, 2200 NE 23<sup>rd</sup> Street in Willmar, Minnesota from 7 p.m. to 8:30 p.m. On October 19, 2004 a second forum, "Truth or Consequences: Replacing Facts with Ideology in Fighting HIV, STDs and Unplanned Pregnancies," also featuring Wagoner, will take place at Macalester College Student Center, Davis Lecture Hall, 1600 Grand Avenue, in St. Paul, Minnesota from 7 p.m. to 8:30 p.m. Both events are free. The October 19 event will include the presentation of the MAP 2004 Hanson-Henningson Award for leadership in the Minnesota Senate to State Senators Sandy Pappas, Jane Ranum, and Ellen Anderson. For more information contact MAP Public Policy at 612-341-2060 or 800-243-7321 or visit the MAP Public Policy page at [www.mnaidsproject.org](http://www.mnaidsproject.org).

### **2004 HIV Resource Guide Available**

MAP announces the publication of its *2004 HIV Resource Guide*. This book contains current information about Minnesota HIV-related prevention and service programs. Services are broken down by type and a brief description is provided for each organization. This resource guide is also available on-line at [www.mnaidsproject.org](http://www.mnaidsproject.org). Visit the [Web site](#) and then click on "HIV Resource Guide." Copies of the 165-page book are available free of charge, by contacting the MAP AIDSLine, 612-373-2437, 800-248-2437, TTY: 612-373-2465/888-820-2437, or [mapaidsline@mnaidsproject.org](mailto:mapaidsline@mnaidsproject.org).

## **Learn More About MAP Programs**

During the first week of each month, the MAP AIDSLine sends out its *MAP AIDSLine Update* to subscribers involved in HIV prevention and service in Minnesota. The email newsletter includes information on HIV-related events and programs throughout Minnesota. If you wish to subscribe please contact the MAP AIDSLine at [mapaidslines@mnaidproject.org](mailto:mapaidslines@mnaidproject.org) or 612-373-2437 or 800-248-2437.

People living with HIV often encounter barriers while navigating the complex health care and other service systems they need. MAP's Systems Advocates work to make these systems more responsive to the needs of those affected by HIV - through research, policy recommendations, education and training. The areas of focus are housing, women and families, corrections and substance use. Each month the Systems Advocates program publishes *Systems Works*, an e-mail newsletter describing current activities and providing many valuable resources. If you wish to subscribe please contact Nicola Havens, MAP Systems Advocate, at (612) 373-9161 or [nhavens@mnaidproject.org](mailto:nhavens@mnaidproject.org).

## **MAP Corrections Systems Advocacy Needs Assessment Report**

Nationally, rates of HIV and hepatitis C are higher in prisons than in the general population. While the recorded number of prisoners in Minnesota is low, many prisoner rights advocates believe the actual numbers are much higher. Minnesota AIDS Project's recently completed needs assessment report compiles interviews, observations and research to offer recommendations for a framework to address and serve Minnesota offenders with HIV. If you would like a copy of this report please contact Nicola Havens, MAP Systems Advocate, at (612) 373-9161 or [nhavens@mnaidproject.org](mailto:nhavens@mnaidproject.org).

## **Upcoming MAP Events**

**The Big Hair Ball** is an annual charity event to benefit MAP launched in 2003 by Randy Fuller, a working hairstylist with HIV, and Diane Matheis, an event planner. Salon clients, corporations, and personal friends came together to create The Big Hair Ball and all proceeds go directly to MAP's education and prevention programs. Taking place on Saturday, November 6 at International Market Square, The Big Hair Ball includes a silent auction, buffet-style dinner, exclusive raffle, live entertainment featuring Miss Richfield 1981, Maggie Faris, and the Casablanca Orchestra, and, of course, fabulous hair. In fact, big hair is "highly" encouraged and for a small donation attendees can have their tresses teased on site by hairspray-wielding professionals! Tickets range from \$50 (general admission table seating) to reserved tables ranging from \$200 to \$500. For further information visit [www.thebighairball.com](http://www.thebighairball.com).

