

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 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 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, Eighth Circuit, or the Minnesota District. Here are some interesting cases from Minnesota state courts and from around the country:

From Minnesota

State of Minnesota by Velma Korbek, Commissioner, Department of Human Rights v. County of Kandiyohi, 6-1700-15780, Office of Administrative Hearings for the Department of Human Rights (9/22/2004): The Minnesota Department of Human Rights claimed that the Kandiyohi County Jail discriminated against Alec Stands because he has AIDS. The county placed the Stands in the jail's medical unit in order to segregate him from the other inmates. This was the "unwritten policy" of the county. He was segregated during his entire period of incarceration, a little over a month. The Department claimed that the county engaged in an unfair discriminatory practice under Minnesota's Human Rights Act based on Stands' health status while the county claimed that it was immune from suit and the Department failed to establish a claim for disability discrimination. The county also claimed that even if the Department could prove disability discrimination that the county had non-discriminatory reasons for taking the action it did,

including the public health nurse's belief that he could be more effectively treated if he stayed in the medical unit as well as concern about whether Stands could transmit the virus to other inmates through fighting or sexual activity. The administrative law judge held that the county did not have immunity because the Department was only seeking injunctive relief and the imposition of a civil penalty, no punitive damages from the county; the goal of the lawsuit was only to bring about policy change. The judge also found that unjustified disability discrimination occurred and the county could not assert an undue hardship defense because it failed to submit any evidence to support its claims of needing to hire more corrections officers to provide 24-hour security for Stands and to ensure that no fights occurred with other inmates. Although Stands had been at the jail on other occasions, the county could produce no evidence that he engaged in fights. The county also failed to produce any evidence supporting its claim that it could only treat Stands effectively in the jail's medical unit. The county presented no evidence of considering other less restrictive alternatives or that it consulted with any "knowledgeable disabled persons or organizations" before placing Stands in segregation. The Department submitted evidence that the state prison system does not segregate prisoners based on HIV status unless, in a physician's opinion, "the inmate's health might be adversely affected by being exposed to other inmates." Stands' physician provided verification that there was no medical reason for segregation. Finally, the county's direct threat defense failed because there is no exception in the statute for such a claim, and even if there was, no evidence was presented that Stands presented a direct threat to the health and safety of others. The judge ordered Kandiyohi County "to cease and desist from segregating inmates who are HIV-positive or have AIDS from the general inmate population in the Jail based *solely* on their medical status absent an opinion from a physician that such segregation is medically necessary in order to protect the inmate's health or a determination that such segregation is necessary based on specific facts related to that inmate." A civil penalty of \$250 was imposed on the county.

From Around the Country

From kaisernetwork.org, Maryland Delegate Calls for Resignation of State Comptroller Schaefer Over Comments About HIV-Positive People (10/15/2004): Maryland State Delegate John Hurson (D) called for the resignation of former Governor William Schaefer (D), now the state comptroller, because of his call for a public registry of HIV-positive people and his comment that people with HIV are "a danger" and "brought [infection] on themselves." Schaefer also said, "People should be able to know who has AIDS. It costs an awful lot of money to treat them." Delegate Hurson, who chairs the Maryland House Committee on Health and Government Operations, stated, "I can't believe a public official of his stature would be so insensitive and, frankly, ignorant." During the 1990s Schaefer promoted a proposal to create a public HIV registry but the state legislature defeated it on three occasions. Maryland currently tracks HIV cases by name but the list is not public or publicly accessible. Schaefer stated that he will not resign and that he plans to "file charges" against Hurson for violating his free speech, as well as run for comptroller again in 2006. Schaefer did apologize for implying that all HIV-positive people are bad, stating that he was referring to those intentionally spread HIV. Several other Democrats and HIV/AIDS advocates joined Hurson in condemning Schaefer's remarks, however some stopped short of calling for his resignation.

From kaisernetwork.org, New Jersey Assembly Passes Two Needle-Exchange Bills; Senate Vote Could Come by End of Month (10/8/2004): The New Jersey Assembly passed two bills providing injection drug users with better access to clean needles in order to reduce the spread of HIV and other infectious diseases. The Bloodborne Disease Harm Reduction Act allows cities to sponsor local needle-exchange programs that are affiliated with hospitals, clinics or health departments, as well as offer additional health-related services. Another bill allows persons over 18 to purchase up to 10 needles from a pharmacy without a prescription. According to Assembly Member Loretta Weinberg (D), chair of the Assembly Health and Human Service Committee, the bill is “one of the most important health care initiatives this state has tackled in decades.”

From kaisernetwork.org, Wisconsin Man Files Lawsuit Claiming Doctor Refused to Perform Surgery Because of His HIV-Positive Status (10/7/2004): A 54-year-old Waupaca, Wisconsin man alleges that an orthopedist refused to perform a scheduled back surgery because of the man’s HIV status. The suit, filed by Lambda Legal Defense and Education Fund, the AIDS Resource Center of Wisconsin, and the Legal Aid Society of Milwaukee, claims that Dr. James Cain violated the Americans with Disabilities Act and the Rehabilitation Act when he informed Stephen Spera that he was canceling a scheduled spinal fusion surgery because a pre-operative blood test revealed that Spera has HIV. Cain did not offer HIV counseling to Spera as required under Wisconsin law. Cain refused to reschedule the surgery even after a nurse called him to say Spera was cleared for surgery. Spera wants Cain to be barred from denying treatment to HIV-positive patients; he also seeks punitive damages. Spera filed a complaint with the Department of Health and Human Services’ Office for Civil Rights in 2003 and Cain agreed to adopt a nondiscrimination policy. Spera also filed a complaint with Wisconsin’s Department of Workforce Development claiming that Cain assumed Spera was gay and that Cain does not require preoperative blood tests for all of his patients.

From kaisernetwork.org, Officials Plan to Drop Lawsuit Against HIV-Positive Woman if She Voluntarily Seeks Treatment (9/30/2004): Officials in Amarillo, Texas dropped a lawsuit against an HIV-positive woman because she agreed to undergo treatment and counseling. The city attorney had filed suit to compel the woman, T.T., to stop having unprotected sex and seek treatment. The suit claimed that T.T. refused efforts by public health officials to compel her to seek treatment and had not informed partners of her health status. Prior to the suit public health officials had warned T.T. by letter to enroll in treatment after learning she was engaged in prostitution to support her drug use. She attended counseling but dropped out after several months and returned to commercial sex work. A local newspaper editorial claimed that T.T. and “others in a similar circumstance need to be stopped” and that although they expected the case to be “contested on civil liberties grounds” the suit was called an “absolute slam dunk” for the city.

Abril v. Department of Corrections, No. 2D03-3123 (Fla. Ct. App., 7/30/2004): Lisa Abril, a licensed practical nurse, gave mouth-to-mouth resuscitation to an inmate. When it was determined that the inmate was infected with Hepatitis C, Abril underwent hepatitis and HIV tests. The prison’s chief medical officer submitted her blood sample to Continental Laboratory, which was under contract with the state to provide clinical laboratory services. Her positive HIV test result was faxed to an unsecured fax machine in the prison’s business office, as well as another fax machine at the Department of Corrections (DOC) in Tallahassee. Several DOC employees learned of Abril’s positive test results through the fax transmissions. Later it was

determined that Abril's test result was a false positive. Abril sued the DOC seeking damages for mental anguish and emotional distress, claiming DOC was liable for the lab's negligence. Her husband, who was working as a corrections officer at the time, claimed damages for mental anguish and emotional distress as a result of the disclosure of the test results. The trial court granted the DOC's motion to dismiss on the grounds that there was no statutory or common-law duty for a laboratory or government entity to protect the confidentiality of HIV test results. The Second District Court of Appeals determined that the case turned on whether the damages caused by the lab's breach of duty were supported by Florida law. The Court reversed the trial court's order on the basis that the "impact rule" did not apply; the rule is a general restriction on claims for emotional-distress damages that are not related to physical injury. The court found no legitimate basis for barring civil actions based on the breach of the statutory duty to keep HIV test results confidential.

MAP Legal Services Case of the Month

Many of MAP Legal Services clients are parents and one of the services we offer is permanency planning -- the opportunity to provide assistance in identifying people who will care for a client's children in the event of hospitalization, incapacity, incompetency, or death. These are difficult decisions for parents to make but every once in a while a case comes up that underscores the importance of planning ahead. A client in her mid-30s, "Amanda," received her HIV diagnosis last year and deteriorated quickly. She lived with her partner and her two children. The children's father serves in the military. Amanda, through her MAP case manager, worked with MAP Legal Services to draw up her plans. However, soon after drafts were created, but not yet executed, her condition worsened. Fortunately she signed her Health Care Directive and this document became instrumental in helping her partner and doctors to carry out her treatment requests, especially when some family members objected. Amanda grew sicker but eventually there was a day when she was sufficiently alert to sign off on the rest of her permanency planning documents, including a will and stand-by custody designation forms for the temporary care of her children with her partner and mother in the event that their father could not assume immediate custody because of his military commitments. Amanda passed away last month but before she died she was able to make all of her wishes known, providing some peace of mind during her brave end-of-life battle.

Spotlight on MAP Legal Services Volunteer: Paulette Joyer

After eight years of solo private practice providing estate planning and probate services, notably on a pro bono basis to several MAP Legal Services clients, Paulette Joyer has now joined MAO Legal Services with Volunteers of America Minnesota, serving seniors statewide with an emphasis on the seven-county metropolitan area. Joyer graduated from William Mitchell College of Law and is a member of the National Association of Elder Law Attorneys and the Minnesota and Hennepin County Bar Associations. She is a member of the Minnesota Lavender Bar Association's Board of Directors and has served as committee chair of the Regional Lavender Law Conference and as a 2004 Lavender Law Conference Programming Chair. She is also a member of the Minnesota Association for Guardianship and Conservatorship's Board of Directors and serves as editor of the Journal of the Minnesota Association for Guardianship and Conservatorship. Joyer can be reached at 612-676-6302 or by e-mail at pjoyer@voamn.org.

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. 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 December 1, 2004 with *Untying Our Hands: A Different Direction for Fighting the Global Epidemic* featuring Congresswoman Betty McCollum, Minnesota Fourth District. U.S. policies and funding initiatives to address the global epidemic, particularly in Africa, have met with everything from praise to disdain. As a member of the U.S. House of Representatives' International Relations Committee, Congresswoman Betty McCollum was involved with drafting the U.S. plan for responding the global AIDS epidemic. She has also visited African countries to learn about we could do to really have an impact. For World AIDS Day, she steps forward to challenge us all to think differently about how to stop the global AIDS epidemic. Additionally, the MAP 2004 Paul and Sheila Wellstone Lifetime Achievement Award will be presented to State Representative Karen Clark. The event takes place from 10:30 a.m. to noon at the Macalester College Student Center, Davis Lecture Hall, 1600 Grand Ave., St. Paul. Co-presented with Outfront Minnesota, District 202, and Macalester College student organizations. For more information contact MAP Public Policy at (612) 341-2060 or (800) 243-7321.

2004 HIV Resource Guide Available

MAP has copies of the *2004 HIV Resource Guide* available for free. 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. 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 mapaidline@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 mapaidline@mnaidsproject.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 email 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@mnaidsproject.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@mnaidsproject.org.

The Minnesota Justice Foundation's 17th Annual Awards Celebration

The legal community and its friends and allies will gather on Thursday, November 11th from 5:30 to 8 pm at the McNamara Alumni Center on the East Bank of the U of M campus, at 200 Oak Street Southeast. Tables of eight start at \$400. Tickets are \$250 or higher for Benefactors and Gold Benefactors, \$100 for Sustainers, \$50 for supporters, \$40 for Public Interest Practitioners, \$25 for Support Staff and Non-Member Students, and \$15 for Student Members.

Please contact Betsy Hodges at betsy@mnjustice.org or (612) 626-9366 to make your reservations or for more information.

The Awards Celebration speaker this year is Ben Johnson, Director of the Immigration Policy Center in DC who stands at the front of an unpopular front in America's battle against terrorism. With Americans vitally concerned about restricting access to their borders, Ben Johnson is resisting tougher immigration laws and widely cast dragnets aimed at deporting Muslims and Arabs. Hear why he thinks America's rush to respond to 9/11 may be squandering valuable resources and alienating people who otherwise would assist us in our war against terror.

This year we will also honor five people who have contributed much to public service in Minnesota's legal community: Peter Wyckoff of the Minnesota Senior Federation; Dan Tyson of Oppenheimer, Wolff & Donnelly; Sarah Shella-Stevens of Central Minnesota Legal Services in St. Cloud; Sai Vang from SMRLS; and Jonathan Mulinix, University of St. Thomas School of Law student and MJF volunteer.

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.