



Minnesota AIDS Project Legal Services provides advice and direct representation to clients, as well as referrals to a network of volunteer attorneys, for HIV-related legal matters including estate planning, 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 Warren Ortland, Legislative Research and Policy Coordinator, at wortland@mnaidsproject.org or (612) 373-2433. 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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Big Hair Mania

The third annual Big Hair Mania will be held Saturday, November 12, at the Minneapolis Convention Center. This gala event benefiting the Minnesota AIDS Project is for mature audiences (must be at least 18 to attend) and features dinner, a silent auction, raffle, and entertainment. This year the entertainment will feature comedian Margaret Cho, along with Lady Bunny, Bruce Daniels and musical guest, Root City. Attendees will also have the opportunity to have their hair done by several Twin Cities stylists volunteering their time to raise money to support HIV prevention programs.

Big Hair Mania was founded in 2003 by Randy Fuller, a hairstylist living with HIV and looking for a way to give back to the community, and Diane Mathies, an event planner for Northwest Airlines. They coordinated their resources and promoted the event among salon clients and corporations creating one of Minnesota’s largest and most anticipated annual fundraising events.

VIP tickets are sold out but dinner and show tickets are available on the website, <http://www.bighairmania.com>, or by contacting MAP at (612) 373-2411.

Estate Planning Services Overview Session

Starting in July, the Legal Services Department expanded their service offerings and is now offering select legal services for a reduced fee to individuals living with HIV and earning more than the income guidelines imposed by the Ryan White Care Act. The services offered are for basic estate and disability planning-including wills, trusts, health care directives and powers of attorney-and representation for individuals seeking social security disability benefits.

The fees charged by Legal Services are being offered at a substantially reduced rate and will therefore make estate and disability planning more accessible to those who may find the current fees charged by private attorneys to be beyond their means.

In addition to our two on-staff attorneys we have a network of attorneys to draw from if needed. For examples, if the estate and disability planning needs of a client are complex, Legal Services will refer the client to an attorney who can address those needs.

Legal Services is offering an informational session on the new services and an estate planning overview on Tuesday, November 1, at 6:30 pm in the Bruce Brockway conference room. For more information and to reserve a place at the session, please contact Dan Kelly at (612) 373-2426.

Introducing MAP's New Public Policy Manager

Amy Brugh recently joined the MAP public policy team in September of 2005. Amy brings knowledge and expertise in legislative advocacy, grassroots organizing, and program management to MAP. Most recently Amy was the public affairs director at Planned Parenthood, where she managed the grassroots communications and advocacy activities of the organization. Amy holds a master's degree in Community Health Education with a focus on public policy from the School of Public Health at the University of Minnesota. She lives in south Minneapolis with her partner, son and dog.

Volunteer Attorney Spotlight – Bill O'Brien

MAP Legal Services is very fortunate in having a distinguished base of volunteer attorneys available for *pro bono* assistance or for referral. One excellent example of the attorneys providing assistance to MAP Legal Services is Bill O'Brien. Bill volunteers his time once a month for Legal Services' employment law clinic. At the half-hour clinic appointments, he gives the clients his initial assessment of their employment issue and suggests some strategies for resolving the situation.

Bill is a founding partner of the firm of Miller O'Brien, PLLP. For more than 20 years he has practiced exclusively in the civil rights, employee rights and labor law areas. Bill and his firm are responsible for achieving landmark results, including the largest pre-suit settlement of a sex-discrimination class action in the country and the largest judgment in a

Fair Housing discrimination case in Minnesota. Bill is identified in The Best Lawyers in America and in The Guide to Leading American Attorneys as one of the best lawyers in the labor and employment law field. He is also named by *Minnesota Law & Politics* as one of Minnesota's "Super Lawyers" and by *Mpls/St. Paul Magazine* as among the top labor and employment lawyers in the state.

Bill O'Brien, Attorney Profiles, available at <http://www.miller-obrien.com/profiles.html>.

Article in *The Nation* on Chief Justice Roberts

The following link is to an article that appeared in the web version of *The Nation* on September 26. The article was written by David Webber, editor of AIDS and the Law. <http://www.thenation.com/doc/20051010/webber>

Updates on HIV-related Case Law

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

U.S. Group That Provides HIV Prevention Services to Commercial Sex Workers Abroad Sues USAID Over Loss of Grant; from *Kaisernetwork.org*, (August 12, 2005): DKT International, a Washington D.C. based not-for-profit organization that provides HIV/AIDS prevention services to commercial sex workers worldwide, has filed a federal lawsuit against United States Agency for International Development (USAID). The complaint argues that their First Amendment right to free speech was violated by the U.S. policy requiring that HIV/AIDS organizations seeking funding to provide services in other countries pledge to oppose commercial sex work. The policy, which Bush administration officials made public in June, stems from two 2003 laws. One bill (HR 1298), authorizing the President's Emergency Plan for AIDS Relief, included an amendment that prohibits funds from going to any group or organization that does not have a policy "explicitly opposing prostitution and sex trafficking." DKT, which last year sold about 390 million discount condoms in 11 countries to commercial sex workers and specializes in marketing techniques that promote condom use, filed the lawsuit against USAID and its administrator, Andrew Natsios, for rejecting an HIV/AIDS subgrant for a project the group has conducted in Vietnam for the past 12 years. According to court documents, DKT in June filed for a \$60,000 subgrant from USAID contractor Family Health International to market condom lubricants to reduce the risk of condom breakage. FHI initially approved the subgrant but then later denied it when DKT refused to sign the pledge opposing commercial sex work.

In its court filing, DKT said that being required to publicly endorse the Bush administration's "political viewpoint" on commercial sex work violates the First Amendment. "The government cannot tell us what policies to have," Philip Harvey, the group's founder, said. DKT, which receives about 16% of its \$50 million annual budget from the U.S. government, has asked the court to prevent USAID from withholding the organization's federal grants pending a ruling in the suit. USAID spokesperson Heather Layman said that although "it's the official policy of the U.S. government to oppose

prostitution and sex trafficking as dehumanizing and degrading, ... there is nothing in U.S. law that prohibits the U.S. or any of our partners from providing services to high-risk populations, including women in prostitution."

New Jersey Appellate Court Upholds Lower Court Decision Disallowing Needle-Exchange Program in Atlantic City; from *Kaisernetwork.org*, (August 17, 2005): A three-judge Appellate Division panel unanimously ruled that a 2004 Atlantic City, N.J., ordinance approving a needle-exchange program intended to help prevent the spread of diseases, including HIV and hepatitis, violates state drug laws. The decision upholds a September 2004 ruling by New Jersey Superior Court Judge Valerie Armstrong, who said the city does not have the authority to create a needle-exchange program. The Atlantic City Council in June 2004 approved 7-1 a proposal to implement a needle-exchange program, even though the New Jersey Office of the Attorney General in May 2004 said that the proposed program did not have the legal authority to operate. Atlantic City Department of Health and Human Services Director Ron Cash said that the city's authority to begin such a program was based on a 1999 law that exempts government agencies from a section of state law that criminalizes needle and syringe possession. State Attorney General Peter Harvey (D) reviewed the law, however, and determined that it allows government agencies to distribute needles and syringes only to people with prescriptions. Atlantic County Prosecutor Jeffrey Blitz later filed a lawsuit to halt the implementation of the state's first needle-exchange program. Writing for the appellate panel, Judge Stephen Skillman said that although the court recognizes the potential benefits of needle-exchange programs, "Atlantic City and its employees are not exempt from the Code (of Criminal Justice) provisions prohibiting the possession, use and distribution of drugs and drug paraphernalia simply because they adopted a needle-exchange program for beneficent reasons."

Supporters of needle-exchange programs said the ruling was not surprising. "All I can say is it's a classic case of public health vs. law enforcement," Cash said, adding, "I think health is equally as important as law. It's a crisis in Atlantic City. We have to do something creative to handle it." State health officials say that injection drug users represent more than half of the state's 62,000 people living with HIV/AIDS. However, state Assembly member Joe Pennacchio (R), one of the lawmakers who filed for the injunction against the executive order, called the ruling "a victory for common sense." He added, "Our efforts should be maintained at stopping drug abuse, not enabling drug abusers by giving them needles." State Sen. Joseph Vitale (D) said the court's decision is another reason for the Legislature to pass a bill that would allow municipalities to establish needle-exchange programs. "Everyone is for the idea of providing more prevention, but few legislators have stepped up and done it," said Vitale, who has co-sponsored such a bill. "The longer we delay, the more lives we lose to dirty needles," he added.

Applicant's HIV status leads to lawsuit; from *Wausau Daily Herald and The Janesville Gazette* (August 20, 2005): According to a lawsuit filed in U.S. District Court in Madison, Korrin Krause, 19, claims a Schofield, Wisconsin restaurant, Log Cabin, violated the Americans with Disabilities Act by ignoring her application for a waitress

job because she was infected with HIV. The U.S. Equal Employment Opportunity Commission filed a lawsuit on her behalf after exhausting efforts to reach a settlement. Robert Tomlinson, an attorney for U.S. EEOC's Milwaukee office said, "She applied for a job she was qualified for. It appears the only reason she wasn't hired was because of her HIV status." The attorney for the Log Cabin restaurant has yet to comment.

According to Tomlinson, Krause applied for the job after she saw an advertisement for the opening. When she had not heard from the restaurant, she went to the restaurant to update her application and saw the words "HIV-positive" written on it. The lawsuit seeks unspecified damages.

This is the second time Krause has filed a discrimination suit against a business. She was awarded \$90,000 in a 2002 settlement with Quality Foods IGA after accusing the store of firing her from her job as a grocery bagger when store managers realized she was HIV-positive.

Ninth Circuit Denies 'Necessity' Defense to HIV-Positive Deportee; from Metropolitan News Enterprise (August 25, 2005): The Ninth Circuit ruled that a district judge properly barred a Mexican immigrant charged with illegal reentry after deportation from using a "necessity" defense based on his HIV-positive status and alleged need to search for his children. The judges said that Roberto Cervantes-Flores failed to offer evidence that he was at imminent risk of death or other serious harm when the border patrol agent spotted and chased him 40 miles north of the border. The court sent the case back to the district court judge for a possible reconsideration on sentencing.

The initial incident arose when a Border Patrol Agent saw Cervantes-Flores walking along the highway early in the morning. Cervantes fled when he saw the vehicle and the Border Patrol Agent began to chase him. When Cervantes was questioned, he admitted to being a Mexican national entering the country illegally. Cervantes moved to suppress the statements based on violations of Miranda. In addition, the defense offered evidence of his HIV-positive diagnosis to support his necessity defense. He claimed that he had not seen his children in twelve years, knew they lived in the U.S., and needed to get into the country to speak to them before his death. The district judge then ruled that this was insufficient to prove a necessity defense because "while he may have a more limited lifespan than others, there is no indication whatsoever that his threat of death or serious bodily injury was imminent, which is required."

Jurors Find Hospital Negligent in HIV Civil Suit; from news.yahoo.com (August 25, 2005): Nadine Johnson was awarded \$52,000 in a civil suit against Methodist Hospital in Houston after she was misdiagnosed as being HIV-positive when she was 8 1/2 months pregnant. Within 24 hours after being told that the standard blood test taken at the hospital was HIV-positive, Johnson went into premature labor. Johnson and her newborn son were given drugs to treat HIV. Two weeks after the birth, her obstetrician called to tell her there had been a mix-up at the lab. Johnson filed suit against the lab that ran the test and Methodist Hospital. She is still concerned about what the HIV drugs might have done to her son, but as of yet there is no conclusive proof that the heavy treatments will have an effect on him.

Family of HIV-Positive Man Who Died in Delaware Prison Sues Prison Health Care Provider, Alleging Inadequate Treatment: from *Kaisernetwork.org*, (August 30, 2005): The family of an HIV-positive man who died while serving a six-month sentence at Gander Hill prison in Wilmington, Del., is suing First Correctional Medical, the prison system's health care provider, and two of its doctors over allegations that they did not take adequate steps to diagnose or treat the inmate's disease. The lawsuit alleges that prison health care providers ignored 37-year-old Louis Chance's health complaints in September 2003 and should have ordered a CT scan or an MRI to help diagnose and treat his cryptococcal meningitis. Chance became comatose and was admitted to a Wilmington hospital, where he died of the opportunistic infection. Family members said they were unaware that Chance was HIV-positive and said he might not have known his status either. More than 40 lawsuits have been filed against Arizona-based First Correctional since 2002, when it was awarded a six-year contract to provide health care for Delaware's inmates. First Correctional pulled out of the contract in June after DOC officials requested an inspection of the provider by the National Commission on Correctional Health Care.

Utah Man Sues Surgical Center, Two Doctors for Refusing Him Surgery Because of His HIV-Positive Status: from *Kaisernetwork.org*, (September 6, 2005): A Spanish Fork, Utah, man filed a civil rights lawsuit against HealthSouth Provo Surgical Center and two physicians, saying they refused him surgery for an ulcerated toe because he is HIV-positive. According to the lawsuit, Daniel Richardson was referred to HealthSouth Provo and had his surgery scheduled for December 2004, but then it was cancelled. The suit says that one of the doctors who referred Richardson for surgery said that, "no scrub techs would do the surgery and it was the policy of HealthSouth Provo Surgical Center not to accept HIV-positive patients." According to the lawsuit, the surgical center and physicians violated the Americans with Disabilities Act. Richardson is seeking unspecified actual and punitive damages and asking the court to permanently prevent the defendants from denying treatment to HIV-positive patients. "I'm hoping (the lawsuit) will serve an educational function and it will remind people there are universal procedures in effect for doctors and other medical practitioners and, if those are followed, there is no need to engage in any sort of discrimination," Richardson's attorney, Marlin Criddle, said. Stephen Owens, an attorney for HealthSouth Provo, said the center is looking into the complaint.

HIV-positive man gets 13 years for spitting blood: Man found guilty of attempted murder of NYC police; from *cnn.com* (September 8, 2005): An HIV-positive ex-convict who said he tried to kill several police officers and a psychiatric hospital employee by biting them or spitting blood in their faces was sentenced to 13 years in prison. Murray was arrested in April 2003 on a charge of promoting prostitution. While being processed at a police station, he spat saliva and blood into the faces of several officers. One of the officers said that she was not infected by Murray's spew but had undergone a debilitating year of therapy with anti-AIDS drugs. Murray also had been accused of chewing a chunk of flesh out of the arm of a mental health worker at the maximum-security Kirby Forensic Psychiatric Center, prosecutors said.

Former HIV-Positive Employee Appeals Dismissal of Discrimination Lawsuit Against Belle Bonfils Memorial Blood Center; from *Kaisernetwork.org*, (September 19, 2005): A former employee of Belle Bonfils Memorial Blood Center in Denver who claims the center discriminated against him because of his HIV-positive status, is appealing a lower court's 2004 dismissal of his lawsuit. John Couture on Thursday told the 10th U.S. Court of Appeals in Denver that he is pursuing the case to prevent other HIV-positive health care workers from being discriminated against. Couture sued Belle Bonfils in December 2002, alleging he was hired by the center in August 2001 as a mobile phlebotomist but was asked, and later forced, to take a different job because he told his supervisors that he is HIV-positive. Couture said that after he disclosed his status, he was pressured to take a laboratory technician job because the center was worried that people might fear donating blood if they knew that Couture was HIV-positive. After he was told he could not work as a mobile phlebotomist, Couture worked as a laboratory technician for a week, then he resigned. The lawsuit contends that Belle Bonfils violated a contract and discriminated against Couture under the Americans with Disabilities Act. U.S. District Judge Robert Blackburn dismissed the case in 2004, saying Couture quit because he did not like his new job not because he was discriminated against.

Several groups joined in filing an *amicus* brief in support of John Couture. These groups included the American Civil Liberties Union, the AIDS Alliance for Children, Youth & Families, the Association of Nurses in AIDS Care, Boulder County AIDS Project, Northern Colorado AIDS Project, and the Whitman-Walker Clinic. The brief presents the arguments against a finding that Couture posed a direct threat to clients of the blood center. The link to the brief is:

<http://www.aclu.org/HIVAIDS/HIVAIDS.cfm?ID=17995&c=89>

In **Boer-Sedano v. Gonzales, 2005 U.S. App. LEXIS 16900 (2005)** the U.S. Court of Appeals for the Ninth Circuit found that alien homosexuals constituted a particular social group for an asylum claim. In that case, Boer-Sedano was a native and a citizen of Mexico. He was born and lived in Tampico, Mexico for part of his adult life where the community knew that he was gay. Boer-Sedano was harassed by a police officer on several occasions because of his sexual orientation. The police officer threatened to kill Boer-Sedano and forced Boer-Sedano to perform oral sex on him. Boer-Sedano did not report this to the police because the harassing officer was "high-ranking." Eventually,

Boer-Sedano moved to Monterrey and worked in an underground gay discotheque, which was closed by a police raid. Again, Boer-Sedano was afraid that the police would harass him because he was gay. While in Monterrey, he was granted a US visitor's visa. Boer-Sedano arrived in San Francisco in 1990 and has not returned to Mexico. In 1992, he was diagnosed with HIV. Boer-Sedano worked for the next 10 years so he could have health insurance to cover his HIV/AIDS drugs. Boer-Sedano applied for asylum in the US. The court held that "alien homosexuals" constituted a particular social group. Ultimately, the court weighed the "social and cultural constraints Boer-Sedano would face as a homosexual man in Mexico, his current health, and the likelihood that serious harm would come to him if forced to relocate to Mexico where he could not obtain his required medications" and found him "statutorily eligible for asylum."

In **State of Ohio v Tommy Dale Price, 2005 Ohio App. LEXIS 3776 (2005)**, the court held that Price, who was a hemophiliac and HIV-positive, feloniously assaulted a police officer when Price bit the officer and spit into his mouth. The relevant statute for felonious assault said that "no person shall knowingly cause or attempt to cause physical harm to another ... by means of a deadly weapon or dangerous ordinance." R.C. 2309.11(A)(2). The deadly weapon in this case was Price himself because he was HIV-positive, and he knowingly bit and spit into the mouth of the police officer. Because Price was a hemophiliac, his saliva contained blood 95-100% of the time. This means that there was a chance that Price could have transmitted HIV to the officer.