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## LAW OFFICES

of the

### LEGAL AID SOCIETY OF MINNEAPOLIS

DOWNTOWN OFFICE  
430 FIRST AVENUE NORTH, SUITE 300  
MINNEAPOLIS, MN 55401-1780  
Voice (612) 332-1441  
TDD (612) 332-4668  
Facsimile (612) 334-5755

SUPERVISING ATTORNEY  
Kathleen M. Davis

ATTORNEYS  
David Adler-Rephan  
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### **Testimony of Kathleen Davis, Legal Aid Society of Minneapolis, before the Rules Reform Task Force**

**December 14, 2000**

I am the supervising attorney of the Minneapolis Legal Aid Society's Government Benefits unit. Our attorneys represent low income people who are having serious problems with public assistance programs. Many of Legal Aid's clients rely on state administered benefit programs such as the Minnesota Family Investment Program (MFIP), Medical Assistance (MA), MinnesotaCare, General Assistance (GA), and child care to meet their basic subsistence needs. Our clients usually contact us because they have been denied eligibility or terminated from one of the programs administered by the Department of Human Services (DHS) or the Department of Children and Families. Continued eligibility for public assistance can prevent a Minnesota family from becoming homeless, ensure that a family member gets needed medical care or guarantee education and training to enable the family to become self-sufficient.

I would like to speak briefly on two issues which I believe are very important to the lives of these low-income families. The ability to be heard by the agency which regulates part of their lives is very important to these families. So, first, I will address the need to make the Minnesota Administrative Procedures Act (MAPA) process as open as possible.

Second, I would like to comment briefly on why it is important to these citizens that agencies, such as the Department of Human Services, promulgate rules through MAPA rather than regulating by use of manuals, bulletins or unwritten policies.

Since agencies which regulate public benefit programs can have a great impact on the lives of low-income Minnesota residents, these individuals benefit from an accessible rulemaking process. At this point, the primary way a citizen can learn about planned rulemaking and proposed changes in rules is by reviewing the *State Register*. For low-income citizens, this type of notice is inadequate because it simply does not reach them. We advocate encouraging agencies to advertise their notices of planned rulemaking on a broad basis. This includes the publication of notices of planned rulemaking in local and community newspapers. The notices, as well as proposed rules changes and the Statement of Need and Reasonableness, should also be published on the agency's website. For

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public benefit recipients, we suggest that notices be posted in public assistance lobbies in the counties as well as in the lobby of the agency proposing the rules.

The notices of rulemaking should always include an address and telephone number so people can call to get their names on agency lists to receive all rulemaking documents. Since many of the clients that we serve do not speak English, the notice regarding rulemaking should be translated into the major languages, other than English, spoken by Minnesota residents. As a stop gap measure, we propose a language block should be placed on the notice. The block would contain instructions translated into eight languages: Hmong, Russian, Spanish, Cambodian, Laotian, Vietnamese, Arabic and Somali. The instructions would inform persons where they can get more information about the proposed rulemaking from someone who speaks their language.

When agencies fail to promulgate needed rules, it can leave significant gaps in public benefits policy. An agency, such as the Department of Human Services, does much of its policy implementation through manuals, bulletins, application requirements and sometimes unwritten procedural requirements. Although the manuals and bulletins are reviewed internally at the agency before publication, there is no external review of most of this material. The public has little or no ability to comment on policies which may adversely affect their interest. Standards get established without any critical analysis by interested persons outside the Department. Unfortunately, this type of action can cause significant harm to low income persons since there are times when a manual provision can be read as inconsistent with a statute.

The Department of Human Services will, on occasion, implement an unwritten policy. For example, an unwritten policy regarding MFIP education plans prevented several students from participating in an innovative education program run by the University. DHS decided that to meet the statutory requirements of MFIP, an education program needed to award a certificate or diploma at its conclusion and must only offer targeted skills courses. These requirements were never communicated to the public. This unwritten policy would have prevented the students from working their way off MFIP to self-sufficiency. This case was resolved in court when a judge found that DHS had created a rule without following MAPA procedure. But not every low-income citizen has the ability to challenge arbitrary agency action in the courts.

While the MAPA requirements are lengthy and often may seem inefficient, the procedures are intended to prevent arbitrary agency actions. Not only is this the major avenue for public comment, but it is the mechanism by which agencies are held accountable to the people affected by its action. Thus, we advocate that agencies promulgate more policies by regulation and less by manuals and instructional bulletins. Despite its obvious fault of delay, the Minnesota Administrative Procedures Act is designed to give stakeholders a real voice in the regulatory process.