

STATE OF MINNESOTA

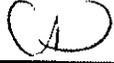
FILED  
Court Administrator

DISTRICT COURT

COUNTY OF RAMSEY

JUL - 6 2011

SECOND JUDICIAL DISTRICT

By  Deputy

In Re Temporary Funding of Core )  
Functions of the Executive Branch )  
of the State of Minnesota )

**Affidavit of Rachel A. Sibley**  
**Senior Staff Attorney**  
**Tubman**

Court File No. 62-CV-11-5203

Affiant Rachel A. Sibley, first being duly sworn, hereby states:

1. I am the Senior Staff Attorney of Tubman, a nonprofit 501(c)(3) organization incorporated at 3111 First Avenue South, Minneapolis, MN 55408.
2. Tubman has more than 35 years of experience in family violence response and prevention. Tubman provides 20% of Minnesota's emergency shelter beds for victims of family violence and offers a full complement of services including emergency shelter, 24 hour crisis intervention, legal advocacy and representation. Tubman's legal advocacy services include civil and criminal court advocates assisting families fleeing domestic violence with emergency protective orders and criminal Domestic Abuse No Contact Orders.
3. This affidavit is in support of the Minnesota Attorney General's request that the Court should direct that the core functions of the executive branch of government continue to be performed and that payments be made for the performance of such functions.
4. Tubman requests that crime victims services funded by the Minnesota Department

of Public Safety, Office of Justice Program be designated by the court as a core function of government that must continue to operate and be funded for the maintenance of public safety and as required by the Supremacy Clause of the United States Constitution. These crime victim services include legal advocacy and shelter services (as noted in testimony by Minnesota Coalition for Battered Women on July 1, 2011). The Honorable Kathleen Gearin directed in her order dated June 29, 2011 that the Commissioner of the Department of Management and Budget “timely issue checks and process funds necessary to pay for the performance of the critical core functions of government as set forth in this order.”

5. The Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to intergovernmental compact agreements or congressional mandates (Order page 7, paragraph 22). Judge Gearin further stated that the State of Minnesota “has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government.... These agreements and obligations involve, but are not limited to, the administration and payment of medical assistance, general assistance, and a variety of other programs designed to ensure the health, safety and welfare of Minnesota citizens” (Order page 7, paragraph 24). The Supremacy Clause of the United State Constitution requires the State of Minnesota to fulfill these agreements (Order page 8, paragraph 25). The work of Tubman staff and

and domestic abuse advocates is funded, in part, by federal dollars received from such agreements. Tubman receives federal dollars designated to ensure the health, safety and welfare of Minnesota citizens through the Minnesota Office of Justice Programs. These federal dollars include funding under the Victims of Crime Act from the U.S. Department of Justice, Office of Victims of Crime; under the Family Violence Prevention Services Act from the U.S. Department of Health and Human Services, Administration on Children & Families, Family & Youth Services Bureau; and under the Violence Against Women Act from the U.S. Department of Justice, Office on Violence Against Women. The Minnesota Office of Justice Programs is obligated under these agreements with the federal government to disburse those federal dollars to Tubman.

6. The Minnesota Constitution provides that “Government is instituted for the security, benefit and protection of the people.” The Court has held that the executive branch is obligated to continue funding its core functions during a budgetary impasse. The “core functions” include matters relating to the life, health and safety of Minnesota citizens as well as functions required to be performed by the State under a federal contract or federal law. *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court File No. CO-05-5928 (Dist. Ct. June 30, 2005). The Minnesota Attorney General petitioned the court to continue core functions of government in the event of a government shutdown stating the “life, healthy, safety, and the liberty of citizens would be profoundly and irreparably impacted” by the shutdown. The Governor’s written response described the state’s constitutional mandate to

provide for the “security, benefit and protection of the people” and “maintenance of public safety” and created a priority setting framework that identifies immediate threats to public health and safety and facilities that operate 24 hours a day as priority one services that must remain uninterrupted. See III A “Priority 1 Critical Services 1.0” as Exhibit A of Judge Gearin’s order. Advocacy services on behalf of domestic violence victims and their families meets this test. It is the state’s responsibility to prevent and prohibit domestic violence and to provide protection and support for such victims. In order to meet these responsibilities the Minnesota State Legislature created legal remedies to protect victims of domestic violence and to hold abusers accountable for their actions. These critical and lifesaving remedies included funding for domestic violence advocacy programs and emergency shelters for families fleeing domestic violence (Minnesota Statute section 611A.32); created a civil Order for Protection remedy under the Domestic Abuse Act (Minnesota Statute section 518.B); and created remedies under criminal statutes relating to domestic assault (Minnesota Statute 609.2242). Domestic violence is a pattern of behavior that one intimate partner, spouse or family member exerts over another as a means of power and control. The legislature created a specific statute of qualified domestic violence related offenses (Minnesota Statute section 609.02 subd. 16).

7. Over the last thirty years, legal advocacy services have evolved and have become a critical and essential component to provide victim safety and willingness to participate in the criminal court process. The advocacy services are part of the state’s public responsibilities and are often times the difference between life and

death of a victim and the children. This process begins when a domestic violence victim contacts law enforcement through an emergency 911 call. Tubman, together with other domestic violence community advocacy programs, served 35,359 victims and provided services to 10,609 victims through criminal justice intervention programs in FY10. As part of law enforcement's investigation of qualified domestic violence related offenses, law enforcement contacts legal advocacy programs from the scene to connect victims with service providers to discuss and implement a lifesaving safety plan. Tubman's 24-hour crisis line offers assistance with personal safety plans, coordinates emergency shelter, offers support and explains legal options available including civil and criminal protective orders. There is a standing Minnesota Supreme Court Order that permits legal advocates to assist and accompany victims seeking Orders for Protection (see attached Exhibit 1, Minnesota Supreme Court Order, C2-87-1089). Legal advocates assist victims in preparing and filing petitions and gathering supportive evidence to successfully obtain their protective order. Most court administration services in Minnesota are unable to provide assistance to victims seeking to prepare such petitions beyond providing the victim with the appropriate paperwork. Legal advocates provide comprehensive and critical assistance to victims preparing such applications for protective orders. For example, legal advocates assist victims in determining which type of protective order is appropriate for their situation and discuss what relief is needed to protect their children. Legal advocates often assist in filling out the court forms and writing the affidavit to ensure that the victim's request for protection and relief

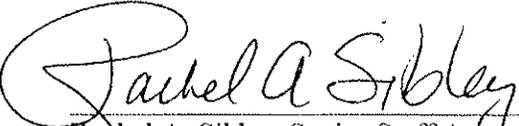
meets the statutory requirements. Navigating through a confusing and complicated court process can be daunting and terrifying for victims. Without a legal advocate to assist them and accompany them to court, victims are often unsuccessful in obtaining comprehensive protective orders. Some victims are in such fear that they are unwilling to request an order if they will have to face their abuser alone without an advocate. These court orders provide immediate and lifesaving protection from abuse and often prevent continued harm. Prosecutors emphasize those victims who obtain Orders for Protection are less likely to recant and more likely to participate in the related criminal court process.

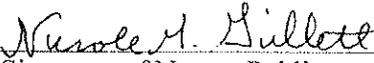
8. Legal advocacy services are an integral part of the Minnesota law enforcement's response to domestic violence crimes. In Minnesota, the police distribute cards to victims with information about local legal advocacy services. In Tubman's service area, law enforcement from 15 city police departments and two county sheriff's departments utilize our Intervention Line to connect victims with advocates from the scene of the domestic incident. This enables legal advocates to contact victims within 24 hours to assure the goals of prosecution and public safety are met. Tubman is collaborating with Washington County Community Corrections and law enforcement on a pilot "Lethality Assessment Project" designed to identify high-risk offenders, encourage victims to access advocacy services, and reduce the risk of serious injury and homicide. On a regular basis, legal advocates are the first to contact victims of domestic violence to discuss Domestic Abuse No Contact Orders. Legal advocates inquire whether the children need to be protected under the No Contact Order and discuss
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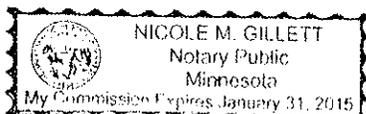
other relevant conditions of release for the defendant. Legal advocates explain the enforcement of such Orders and the criminal court process. Domestic Abuse No Contact Orders in the criminal court system provide immediate court-ordered protection. Throughout the criminal court process which can last up to a year, legal advocates assist victims in understanding their rights as victims of crime, preparing victim impact statements and accompanying them to court or attending court appearances on their behalf. Legal advocates ensure that the victim's wishes regarding the outcome of the criminal case are conveyed to the prosecutors and to the court.

9. Tubman's collaboration with the criminal and civil court justice system is essential to holding abusers accountable and providing the necessary safety net for victims. An interruption in these services will force victims to stay in dangerous situations and increase the risk of serious injury and domestic homicide. Legal advocacy services that receive state and federal funding administered by the Minnesota Office of Justice Programs should be deemed a critical core function necessary for the maintenance of public safety and essential to the health and safety of victims of domestic abuse and their families.

Further Affiant sayeth not.

  
Rachel A. Sibley, Senior Staff Attorney  
Tubman

  
Signature of Notary Public  
Subscribed and sworn to before me  
this 6<sup>th</sup> day of July, 2011



STATE OF MINNESOTA  
IN SUPREME COURT

C2-87-1089

In re Domestic Abuse Advocates

ORDER

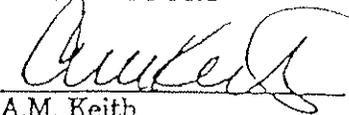
Pursuant to the recommendations of the Minnesota Supreme Court Task Force for Gender Fairness in the Courts,

IT IS HEREBY ORDERED:

1. In all proceedings before the trial court under Minnesota Statutes 518B, domestic abuse advocates shall be allowed to attend and sit at counsel table, confer with the victim, and, at the judge's discretion, address the court.
2. In criminal trial court proceedings, domestic abuse advocates shall be allowed to accompany the victim, confer with the victim and, at sentencing, at the judge's discretion, be heard by the judge.
3. Court administrators shall allow domestic abuse advocates to assist victims of domestic violence in the preparation of petitions for protection orders.
4. When they assist victims of domestic violence as specified in this order, domestic abuse advocates are not engaged in the unauthorized practice of law.

DATED: February 5, 1991

BY THE COURT

  
A.M. Keith  
Chief Justice

OFFICE OF  
APPELLATE COURTS

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FILED

Exhibit 1