

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JOSEPH RAYMOND HANAS,

Plaintiff,

v.

INNER CITY CHRISTIAN OUTREACH  
CENTER, INC., et al.,

Defendants.

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Case No: 2:06-CV-10290

Hon. Arthur J. Tarnow

Magistrate Judge Mona K. Majzoub

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**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AS TO ALL DEFENDANTS**

Plaintiff Joseph Raymond Hanas moves for summary judgment, pursuant to F.R.C.P. Rule 56, against defendants Dwight R. Rottiers, Inner City Christian Outreach Center, Inc., and Reginald Coleman as to Counts I through IV of the Complaint, and against defendant Stanette J Amy as to Counts I through V of the Complaint, for the reason that there is no genuine issue of material fact and plaintiff is entitled to judgment against all defendants as a matter of law, as stated in the attached Brief In Support.

WHEREFORE, plaintiff Hanas respectfully requests that the court grant summary judgment in his favor against defendants Dwight R. Rottiers, Inner City Christian Outreach Center, Inc., and Reginald Coleman as to Counts I through IV of the Complaint, and against defendant Stanette J. Amy as to Counts I through V of the Complaint, and that the court grant attorneys fees and costs under 42 U.S.C. § 1988 and such other relief as the court deems appropriate.

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Dated: August 1, 2007

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AS TO ALL DEFENDANTS**

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## STATEMENT OF ISSUES PRESENTED

- I. Did Defendants Rottiers and ICCO Act Under Color of State Law Where the Drug Court Was Directly Involved in and Was an Integral Part of Rottiers' Unconstitutional Actions, and Where There Was an Interdependent and Symbiotic Between ICCO and the Drug Court?
  
- II. Should Summary Judgment Against Rottiers and ICCO Be Granted Where There Is No Genuine Factual Dispute That These Defendants (1) Violated Plaintiff's Right to Religious Freedom under the Free Exercise Clause by Operating a Coercive Religiously-themed Residential Program; (2) Violated the Establishment Clause by Wielding the Authority of the Drug Court to Impose Their Religious Beliefs and Practices on Plaintiff Hanas; (3) Violated Equal Protection By Specially Disadvantaging Hanas Because of his Religion; and (4) Violated the Sixth Amendment by Attempting to Deprive Plaintiff of the Assistance of Counsel?
  
- III. Should Summary Judgment Against Stanette Amy Be Granted Where There Is No Genuine Factual Dispute That Amy (1) Violated the Establishment and Free Exercise Clauses by Wrongfully Failing to Investigate ICCO Before Recommending It, When the Foreseeable Result Was That Hanas Would Be Placed in the Untenable Position of Choosing Between Imprisonment and the Pervasively Religious Program at ICCO; (2) Contributed to and Acted in Furtherance of Her Co-defendants' First Amendment and Equal Protection Violations by Failing to Intervene or Assist Plaintiff; (3) Deprived Plaintiff of His Sixth Amendment Right to Counsel by Discouraging the Retention of Counsel and by Ignoring and Failing To Remedy Obvious Sixth Amendment Violations by Her Co-defendants?
  
- IV. Should Summary Judgment Against Reginald Coleman Be Granted Where There Is No Genuine Factual Dispute That Coleman (1) Violated the Establishment and Free Exercise Clause by Participating as a Co-conspirator in the First Amendment and Equal Protection Violations by Rottiers and ICCO; (2) Deprived Plaintiff of His Sixth Amendment Right to Counsel by Acting in Concert with Rottiers and ICCO to Discourage the Retention of Counsel?

**CONTROLLING AUTHORITY**

*Lombard v. La.*, 373 U.S. 267 (1963)

*Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961)

*Lee v. Weisman*, 505 U.S. 577 (1992)

*Procunier v. Martinez*, 416 U.S. 396 (1974)

## STATEMENT OF FACTS

Plaintiff incorporates by reference the Statement of Facts set forth in his Response To Stanette Amy's Motion For Summary Judgment, supplemented by record citations in the following Argument as necessary.<sup>1</sup>

## ARGUMENT

### I. INTRODUCTION

As indicated by the lengthy string citations in this Brief, many courts have addressed the compelling constitutional issues that arise when a criminal defendant is placed in a rehabilitation or treatment program that incorporates religious elements. In such cases the state's coercive authority imposes on the unwilling defendant a religious doctrine or practice that is not his or her own, in clear violation of the Establishment and the Free Exercise Clauses of the First Amendment.

This case is of the same ilk, but it is far more egregious than most. Plaintiff Hanas was placed by the Drug Court in a pervasively religious and coercive residential program, where he was forced to study and practice a religion other than his own Roman Catholic faith, where his religious articles were confiscated and where he was barred from the ministrations of his Priest. Hanas attempted to convey his plight to defendant Amy, the court official whose duty it was to assist him, with the following words: "The only thing that we do all day is read the bible and go to church and listen to preachers all the time talking about there God and I do not like there Church. I can not stand it I would rather go to my church on sundays and wendayse." Plaintiff's untenable choice was to suffer a violation of his religious freedom, or face incarceration. When he appealed to the court

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<sup>1</sup> The Declarations of Joseph Hanas, Chris Hanas, Diane Kropelnitski and John Yiannatji are appended to the Response to Amy's Motion for Summary Disposition. Deposition citations and exhibits cited in this Brief are attached hereto.

for relief, he was punished with a conviction and incarceration. To make matters worse, the defendants attempted to prevent plaintiff Hanas from obtaining the legal assistance he needed to protect his rights. The undisputed evidence shows that all of the defendants acted individually and in concert to impose these unconstitutional and unconscionable conditions on Hanas.

## **II. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO DEFENDANT ROTTIERS.**

### **A. Rottiers Acted “Under Color of Law.”**

Pastor Dwight Rottiers wielded the full force and coercive power of the Drug Court, with the Drug Court’s *imprimatur* and approval. Accordingly he acted under color of law for purposes of 42 U.S.C. § 1983. The Supreme Court has developed three tests for determining when private individuals are engaged in state action for purposes of § 1983: (1) the “state involvement” test, *Lombard v. La.*, 373 U.S. 267 (1963); (2) the “symbiotic relationship” test, *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); and (3) the “public function” test, *Marsh v. Alabama*, 326 U.S. 501 (1946). A plaintiff need only satisfy one of these three tests in order to establish a private actor’s liability under § 1983. As a matter of law, Rottiers was a state actor under both the state involvement and the symbiotic relationship tests. *See Palmer v. Columbia Gas Co.*, 342 F. Supp. 241, 246 (N.D. Ohio 1972), *aff’d*, 479 F.2d 153, 165 (6th Cir. 1973) (finding a private defendant to be a state actor as a matter of law) (implicitly overruled on other grounds by *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974)).

#### **1. The Degree of State Involvement Was Sufficient For a Finding that ICCO Was A State Actor.**

When the government is directly involved in and endorses private actions that would otherwise be unconstitutional for the government itself to undertake, those actions are considered

state action. *Lombard v. La., supra.* State involvement in practice is illustrated by *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 616 (1991), where it was held that a court's enforcement of an attorney's discriminatory jury challenges rendered the attorney a state actor, because, "a private party could not exercise its peremptory challenges absent the overt, significant assistance of the court." *Id.* at 623. Persuasive and undisputed evidence of the court's endorsement and enforcement of Rottiers' private actions can be found in the record of the January 24, 2003, hearing, at which Judge Ransom and Stanette Amy delivered the following admonitions to Hanas :

THE COURT: You go to Pastor Rottiers' program, you follow the rules, you successfully complete it, you'll complete his program, you'll end up at the same time completing the Drug Court program . . . \* \* \* If you don't follow the rules, the prospect you're going to come back here and you're going to go to prison.

MS. AMY: And remember, the rules of Pastor Rottiers' program are the rules of the Court. It's just the same. You screw up that, you screw up this. [Amy Exh. 10, 1/24/03 Tr., pp.12-13]

Weeks later, after being alerted to the complaints and allegations of religious coercion and other constitutional violations at ICCO, Stanette Amy nevertheless confirmed to Rottiers that he had the full weight of the Court behind him:

I advised Pastor of Judge Ransom's reinforcement of my comments on the record explaining to Joe that any order of the program us in fact the Court's order and he has to follow the rules or face the consequences. [Amy Exh. 6, compliance log, 2/11/03 entry]

The Drug Court's involvement in legitimizing and enforcing the authority wielded by Rottiers was an important and necessary element in ICCO's civil rights violations.

**2. There Is No Genuine Dispute That There Was A Symbiotic Relationship Between ICCO And The Drug Court.**

As a matter of law, Rottiers was a state actor because of the interdependent and symbiotic relationship between the Drug Court and ICCO. Here, as in *Burton v. Wilmington Parking*

*Authority, supra*, the interconnection and the “benefits mutually conferred” all “indicate[] that degree of State participation and involvement in discriminatory action which it was the design of the Fourteenth Amendment to condemn.” *Id.* at 724; *see also Smith v. Holiday Inns of America, Inc.*, 336 F.2d 630, 635 (6th Cir. 1964). The Drug Court provided ICCO with a source of referrals, while ICCO served the Drug Court’s need for a no-cost residential program. These mutual benefits were conferred at the cost of Hanas’ religious freedom.

Even where a private party is not working in an intimately symbiotic relationship with the government, which was the case here, the appearance of a close nexus brings that party’s actions under color of law, because the result is that the private party’s actions command the same respect, deference and obedience as the government’s. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974). A victim’s subjective belief that a private actor is part of the state, along with a reasonable inference that the wrongdoer had knowledge that his actions both implied state action and violate constitutional rights, is sufficient for a finding of state action. *Chapman v. Higbee Co.*, 319 F.3d 825, 834 (6th Cir. 2003).

The evidence establishes that a nexus existed in appearance and in reality. Judge Ransom articulated the Drug Court’s relationship with ICCO succinctly: “We made a deal with Pastor Rottiers. He’s a partner in the Drug Court.” (Amy Exh. 10, 1/24/03 Tr., p.13) Reinforced by the Court and by Stanette Amy, Rottiers repeatedly and credibly threatened Hanas that he would be sentenced to prison if he disobeyed. Hanas testified in his deposition:

[Pastor Rottiers] says – He could tell me, like, if I don’t have the lawyer – if I don’t, like, call up my aunt or my mom and try to get the lawyer, my attorney, from not going down there to the program, and not to send – then he’ll throw me out on the streets and I’ll go to prison.

(Hanas 51; *see also*, J. Hanas Dec. ¶¶ 15, 16) The contemporaneous letters Hanas wrote open a

window to his subjective understanding. For example, he wrote to his mother: “I am going to go to prison if you keep messing with paster.” (C. Hanas Dec. Exh. F) Given the indisputable nexus between the Drug Court and ICCO, there is no genuine factual issue as to whether Rottiers was a state actor.

**B. There Is No Genuine Factual Dispute That Rottiers and ICCO Violated Hanas’ Constitutional Rights Under the Establishment and Free Exercise Clauses.**

Defendants Rottiers and ICCO wielded the power and authority of the Drug Court to intimidate Hanas into conforming to Pentecostal beliefs and practices and to hinder Hanas from practicing his own Roman Catholic faith. These actions violated the Establishment Clause and the Free Exercise Clause.

**The Establishment Clause Violation.**

Hanas was immersed and isolated in an intensively coercive environment. ICCO’s strictly enforced rules attempted to narrowly limit Hanas’ world by blocking out contact with family, friends, media and other aspects of the “secular” world. This isolation made Hanas more vulnerable to ICCO’s concentrated religious indoctrination. Rottiers described ICCO as “nondenominational.” (Rottiers 55) In fact, ICCO clearly was a Pentecostal church. Joshua Holt stated in his Declaration: “Pastor Rottiers told us that ICCO was a Pentecostal Church and that we were Pentecostal while we were there.” (Holt Dec. ¶ 7)

Within the cloistered confines of ICCO, Hanas and others were subjected to several hours of daily intensive scriptural study (made even more intensive if a “word fast” punishment was inflicted). Rottiers frankly conceded: “We are a Christ-centered Bible teaching program. That’s

what we're all about. Anything other than that we do not allow in there.” (Rottiers 77)<sup>2</sup> Hanas and others were required not only to attend but to participate in the Pentecostal religious services. (J.

Hanas Dec. ¶ 11; Holt Dec. ¶ 6) Joshua Holt stated in his Declaration:

I and other residents of the program were told many times by Pastor Rottiers that if we didn't go along with the program and the worship the way the Pastor told us to, we would be kicked out of the program. Pastor Rottiers told me that I would be sent to prison if I didn't worship they way he wanted me to. [Holt Dec. ¶ 5]

ICCO strictly enforced the rules -- in Hanas' case with the threat of conviction and prison. The rules included the following: “I will participate in all aspects of the program (bible classes, devotions, prayer, work, recreation, fast day, etc.).” (J. Hanas Dec. Exh. A)

Hanas resisted the religious indoctrination at ICCO. Hanas states in his declaration:

I was very uncomfortable at ICCO during the entire time I was there. I understood that I had to try to do what the Judge ordered so that I would not be sent to prison. All of the religion at ICCO, such as the Bible classes and the church services and all of the religious talk, made me feel very unhappy, because it was different from the religion I was used to and I did not want to have that kind of religion in my life.

(Hanas Dec. ¶ 16) Hanas complained repeatedly that the brand of Christianity inculcated by ICCO was not his faith. He told Stanette Amy in a letter: “this place dose nothing but talck about some god that I do not even beleave in and it is against my religon and all they do is god stuff.” (C. Hanas Exh. D; see also, Hanas 89, 102, 168)

Nevertheless, the intensive religious indoctrination had an effect in Hanas, portrayed poignantly in Chris Hanas' February 5, 2003, letter to Stanette Amy, in which she described a healing Rottiers performed on a disabled woman: “. . . he did his healing telling her, her feelings

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<sup>2</sup> Defendants may argue that forced religious study did Hanas no harm, because there was no discernable difference between the Bible studied at ICCO and the Bible of Hanas' Roman Catholic faith. Of course, regardless whether that is true, it is beside the point. Hanas was forced to study the ICCO's Bible against his will.

are coming back to her legs & told everyone to raise their hands up to God for a healing. Joe raised up his arms & I wanted to walk out.” (C. Hanas Dec. Exh. E) Hanas’ contemporaneous letters reveal him to have been confused and at times succumbing to the pressure to conform. After being at ICCO only a few days, Hanas wrote to his mother: “. . . I have bin thinking a lot about what reggy [Coleman] said about when we where born and we all have are owne destinations and I think that maby god wanted me to be here or in some place for some certon amount of time . . .” (C. Hanas Dec. Exh. A, p. 5) The following day Hanas handed his mother a note recanting the letter and asking her to “do what ever to get me out.” (*Id.* Exh. B) A few days later Hanas wrote to his mother about Rottiers’ threats to send him to prison if he did not conform, commenting, “GOD must want me here.” (C. Hanas Dec. Exh. F) After recounting to his girlfriend that he was resigned to staying at ICCO for a year, that Rottiers had threatened him with expulsion and prison (telling him to pack his bags), and that Rottiers had denied his request to speak with his lawyer (*Id.* Exh. H, pp. 1-2), Hanas wrote:

I have bin thinking about things people tell me latley only because .GOD. speaks through other people and I here the pasture is only trying to help me it may not seam like that but after today I think that it might be tru because if I where to leave this program I could spend 4 years in prison . . . I think that .GOD. wants me here . . . [*Id.* p. 3]

\* \* \*

I need to just be totly involved in .GOD. because I never want to be like I wuz and if I give my life to .GOD. I will become a better person spertuly and I will be blested in all sorts of ways. [*Id.* p. 5]

This manner of thinking and speaking was unnatural for Hanas. (J. Hanas Dec. ¶¶ 17-19; C. Hanas Dec. ¶ 9) It was a product of the religiously coercive environment at ICCO.

The above actions, cloaked with the authority of the Drug Court, unquestionably violated

the Establishment Clause. “At the core of the Establishment Clause is the idea that government cannot ‘favor religion over nonreligion, nor sponsor a particular sect, nor try to encourage participation or abnegation of religion.’” *Peck by Peck v. Lansing School Dist.*, 148 F.3d 619, 627 (6th Cir. 1998)(quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 694 (1970)(Harlan, J., conc.)).

“Government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion.” *Lee v. Weisman*, 505 U.S. 577, 604 (1992)(Blackmun, J., conc.) As discussed in the Response to Stanette Amy’s Motion for Summary Judgment, application of the Constitution’s protection of religious freedom to situations of this kind is well-settled.

Illustrative of the extensive body of case law is *Kerr v Farrey*, 95 F.3d 472 (7<sup>th</sup> Cir. 1996), in which the Seventh Circuit held that an inmate in a minimum security prison could not be required to attend Narcotics Anonymous (NA) meetings that had religious content, where failure to attend would have resulted in transfer to a higher security prison and diminished chances of parole. The Seventh Circuit found the plaintiff’s allegations that “the prison authorities . . . are coercing him, under threat of meaningful penalties, to attend religious meetings” sufficient to show an Establishment Clause violation. *Id.* at 479. The court found three factors crucial: “first, has the state acted; second, does the action amount to coercion; and third, is the object of the coercion religious or secular?” *Id.* As discussed earlier, the first element is satisfied here, because Rottiers operated in concert with the Drug Court, and the persuasiveness of his threats to plaintiff Hanas derived from that association. Indisputable evidence establishes the second and third elements of coercion and religious content.

In *Warner v. Orange County Department of Probation*, 95 F.3d 202 (2<sup>nd</sup> Cir. 1996), *vacated and remanded*, 115 F.3d 1068 (1997), *re-aff'd*, 173 F.3d 120 (1999), *cert. denied*, 528 U.S. 1003 (1999), the defendant was sentenced to attend Alcoholics Anonymous (AA) meetings after pleading guilty to drunk driving. Although he complained to his probation officer that he was an atheist and that the AA meetings had overtly religious content, the plaintiff was told to participate or face revocation of his probation and incarceration. The Second Circuit found that presenting the plaintiff with this choice violated the Establishment Clause, based on the fact that, “Warner was coerced into participating in these religious exercises by virtue of his probation sentence.” *Id.* at 1075. Many cases are in accord with *Kerr* and *Warner*.<sup>3</sup>

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<sup>3</sup> *Accord: Warner v. Orange County Department of Probation*, 95 F.3d 202 (2<sup>nd</sup> Cir. 1996), *vacated and remanded*, 115 F.3d 1068 (1997), *re-aff'd*, 173 F.3d 120 (1999), *cert. denied*, 528 U.S. 1003 (1999)(discussed below); *Armstrong v. Beauclair*, 2007 WL 1381790 (D. Idaho 2007)(forced participation in AA/NA violates the Establishment Clause); *Ross v. Keelings*, 2 F. Supp.2d 810 (E.D. Va. 1998)(holding unconstitutional the choice given to inmates of participating in prison program emphasizing religion or losing good conduct allowances); *Warburton v. Underwood*, 2 F. Supp.2d 306 (D.N.Y. 1998)(plaintiff’s claim of coerced participation in Narcotics Anonymous stated an Establishment Clause violation); *Alexander v. Schenk*, 118 F. Supp.2d 298 (D.N.Y. 2000)(participation in religiously-oriented substance abuse program on penalty of misconduct citations held unconstitutional); *Bausch v. Sumiec*, 139 F. Supp.2d 1029 (E.D. Wis. 2001)(government may “condition parole on participation in a religiously-oriented treatment alternative to revocation only if the religiously-orientated treatment alternative is not the only choice available.”); *Griffin v. Coughing*, 88 N.Y.2d 674; 673 N.E.2d 98 (N.Y. Ct. App. 1996), *cert. denied*, 519 U.S. 1054 (1997)(“ . . . under the Establishment Clause of the United States Constitution’s First Amendment, an atheist or agnostic inmate may not be deprived of eligibility for expanded family visitation privileges for refusing to participate in the sole alcohol and drug addiction program at his State correctional facility when the program necessarily entails mandatory attendance at and participation in a curriculum which adopts in major part the religious-oriented practices and precepts of Alcoholics Anonymous.” *Id.* at 677); *Scarpino v. Grosshiem*, 852 F. Supp. 798 (S.D. Ia. 1994) (same); *Arnold v. Tennessee Board of Paroles*, 956 S.W.2d 478 (Tenn. 1997)(same); *Nusbaum v. Terrangi*, 210 F. Supp.2d 784 (E.D. Va 2002) (removal of good conduct credits for failure to participate in religious prison program was unconstitutional); *Rausser v. Horn*, 1999 U.S. Dist. LEXIS 22583 at pp. \*8 - \*11 (W.D. Pa. 1999), *aff'd*, 241 F.3d 330 (3d Cir. 2001); *Bobko v. Lavan*, 2005 WL 1309072 (M.D. Pa 2005), *aff'd by* 157 Fed. Appx. 516 (3<sup>rd</sup> Cir. 2005); *Turner v. Hickman*, 342 F. Supp. 2d 887 (D.Ca 2004); *Catala v. New Hampshire Dept. of Corrections*, 2005 WL

The Sixth Circuit recently addressed Establishment Clause principles with respect to a religiously-themed residential program, in a different context, in *Teen Ranch v. Udow*, 389 F. Supp. 2d 827 (W.D. Mich. 2005); *aff'd* 479 F.3d 403 (6th Cir. 2007). The Court of Appeals affirmed the Western District's grant of summary judgment against a religious residential program for troubled teens, which challenged the withdrawal of referrals and state funding. Teen Ranch argued that there were no Establishment Clause concerns because participation in its religious programming and activities was voluntary and residents had the right to opt out. While there was some factual dispute regarding the amount of compulsory religion in the program, the District Court characterized the religiously-imbued environment as follows:

The pressures that the Supreme Court recognized in the public school setting would inevitably be far greater in a long term residential program where the youth are separated from their parents, deprived of many personal freedoms, and under the daily supervision and influence of those who are leading the religious activities.

389 F. Supp. 2d at 837 (*citing, inter alia, Lee v. Weisman*, 505 U.S. 577, 596 (1992)). Further, the ability to select a secular program necessary to avoid Establishment Clause problems with government funding was not sufficiently robust, particularly in light of the initial involuntary placement and the youth and suggestibility of the residents.<sup>4</sup>

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3133036 (D.N.H. 2005); *Gray v. Johnson*, 2005 WL 3036644 (E.D. Va. 2005); *Jefferson v. Wolfe*, 2006 WL 1947721 (W.D. Pa. 2006); *Francis v. Hughes*, 2006 WL 2716458 (D.S.C. 2006); *Kollyns v. Hughes*, 2006 WL 2716407 (D.S.C. 2006).

<sup>4</sup> The District Court said: "In this case the wards of the State are not presented with any alternatives. They are presented with one placement by the State and they have the ability to opt out of that placement if they object to the religious nature of the program. In that event the State will place the child in an alternative program. Although the children have the ability to opt out of a religious program, they do not have the ability to choose or reject a religious program from a menu of secular and religious programs." *Id.* at 836.

This case can be distinguished from many of the cases cited above because the circumstances here were more egregious, in two respects. First, while in many cases Establishment Clause violations were found where the plaintiff was exposed to a program with religious mixed with non-religious content, here the ICCO program was completely and pervasively religious. There was virtually no secular component to the ICCO program. Second, ICCO was a singularly oppressive and coercive environment, characterized by isolation from the outside world and overt threats of punishment.<sup>5</sup>

### **The Free Exercise Clause.**

In addition to coercively indoctrinating Hanas in Pentecostal scripture, beliefs and practices, ICCO actively suppressed Hanas' practice of his Roman Catholic faith, violating the Free Exercise Clause. The evidence is overwhelming that Rottiers prohibited Hanas from seeing his Priest and receiving Holy Communion. Rottiers prevented Hanas from practicing his faith with the threat of imprisonment. Diane Kropelnitski stated in her Declaration (and in an Affidavit filed in the Genesee Circuit Court, and in a letter to Judge Ransom) that Rottiers told her that he would not allow Hanas' Priest, or a Muslim cleric, at ICCO, and that Hanas had given up his freedom of religion. (Kropelnitski Dec. ¶ 5, Exh. A, B) John Yiannatji states in his Declaration that Rottiers derided the Catholic Church across the street as a "den of iniquity." (Yiannatji Dec. ¶ 4) Hanas' contemporaneous letter to his mother provides compelling corroboration. (C. Hanas Dec. Exh. C)<sup>6</sup>

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<sup>5</sup> Even if the evidence of overt and heavy-handed threats and coercion was not as compelling as it is, more subtle pressure is sufficient to violate the Establishment Clause. *See, Lee v. Weisman, supra*, at 592, 595 (recognizing that "subtle coercive pressure" can interfere with a person's "real choice" as to religious participation).

<sup>6</sup> Rottiers denied making these statements to Hanas and his family. (Rottiers 84-85, 95-96) It is telling that when asked in his deposition whether he would allow other faiths in his program,

Perhaps most telling is the fact that, despite attempts to arrange it, Hanas never was permitted to see a Priest or Deacon while he was at ICCO. Additionally there was the confiscation of Hanas' rosary and prayer book by an overseer. Another resident, Joshua Holt, witnessed the incident. And another resident, Donald Malinowski, was expelled from ICCO after his Catholic religious articles were discovered. "A prisoner's possession of. . . personal property relating to religious observance, such as a Bible or a crucifix, is surely protected by the Free Exercise Clause of the First Amendment." *Hudson v. Palmer*, 468 U.S. 517, 547 n. 13 (Stevens J., conc. in part and diss. in part) (citing *Cruz v. Beto*, 405 U.S. 319, 322 n. 2 (1972)(*per curiam*). Although a prisoner's free exercise rights may be curtailed by a policy "reasonably related to legitimate penological interests," *Turner v. Safley*, 482 U.S. 78, 89 (1987), there can be no argument in this case that barring Hanas from seeing a Priest and depriving him of his prayer book and rosary served any penological interest whatsoever.

It was well-established that Equal Protection requires that a prisoner have, "a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners who adhere to conventional religious precepts." *See Cruz v. Beto, supra*, at 1080-1081. Rottiers and ICCO violated Equal Protection by treating Hanas far more harshly than other residents because he wished to practice his faith (and then because he sought an attorney's help so he could do so).

**C. Rottiers and ICCO Deprived Hanas of His Right To Assistance of Counsel.**

Once attorney John Yiannatji appeared at ICCO, Rottiers employed all manner of threats and

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Rottiers answered, " Well, let me – le me say it like this. We are a Christ centered Bible teaching program. That's what we're all about. Anything other than that we do not allow in there." (Rottiers 76-77) Rottiers stated that a Wiccan would not be permitted to observe his religion at ICCO. (*Id.* 96-98)

intimidation to prevent the attorney from rendering assistance. Hanas had the right to counsel during his placement at ICCO. *Townsend v. Burke*, 334 U.S. 736 (1948)(right to counsel in sentencing proceedings); *Mempa v. Rhay*, 389 U.S. 128 (1967) (some probation and parole proceedings); *U.S. v. Tucker*, 404 U.S. 443 (1972)(sentencing proceedings). Prisoners specifically enjoy a constitutional right to counsel. *E.g., Procunier v. Martinez*, 416 U.S. 396 (1974).

The constitutional violation took two forms. First, Yiannatji was physically barred from assisting his client. He was allowed only a brief “private” meeting with Hanas after threatening to seek a court order. (Yiannatji Dec. ¶¶ 5, 6) Thereafter, Yiannatji was physically prevented from seeing or communicating with his client. (*Id.* ¶ 7, 8; Hanas 57-58)

Second, just as he had with the Catholic Priest, Rottiers threatened Hanas with expulsion and prison if he did not convince his mother to abandon legal assistance. In a February 11, 2003, letter to his girlfriend, Hanas wrote, “I asked him [Rottiers] if I could speak with my layer and he says no and he would take cair of every thing.” (C. Hanas Dec. Exh. H p. 2) Hanas was pressured on at least two occasions to call his mother and convince her to withdraw Yiannatji, under the threat of prison if he did not comply. (J. Hanas Dec. ¶¶ 15, 16; Hanas 54-55; C. Hanas Dec. ¶¶ 21, 23, 26, Exh. J; Kropelnitski Dec. ¶ 9) In one case it was obvious to Chris Hanas that Rottiers and Reginald Coleman both were threatening the plaintiff with prison while he was on the telephone with them. (C. Hanas Dec. ¶ 26) In another letter Hanas seemed resigned to not having legal representation: “I want no more troubel while I am in here I do not think that the loyer will be able to get me out of here every one tells me that if we keep messing with pasture he will get me in trouble. . .” (C. Hanas Dec. Exh. G) As with the Priest, Rottiers’ efforts to prevent Hanas from getting help from the outside world were successful.

**III. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO DEFENDANT AMY.**

Stanette Amy violated plaintiff's First Amendment, Equal Protection and Sixth Amendment rights in two ways: first by her failure to investigate ICCO before recommending that Hanas be placed there; and second by acting thereafter in furtherance of ICCO's constitutional violations and by failing to act to protect Hanas from an obvious deprivation of rights.

**A. There Is No Triable Issue As To Amy's Liability For Her Lack Of Due Diligence Before Recommending That Hanas Be Placed At ICCO, Where A Violation Of Hanas' Rights Was Reasonably Foreseeable.**

As to the first aspect, Amy unconstitutionally chose to recommend ICCO – with the foreseeable consequence that Judge Ransom would act on her suggestion – without first conducting a reasonable investigation or obtaining information about ICCO. Rather than help Hanas to complete the Drug Court program, Amy helped impose on Hanas an unconstitutional choice between religious freedom and imprisonment. Amy helped force Hanas into ICCO on January 24, 2003, with virtually no investigation of ICCO and with no attempt to determine the nature of the religious component of ICCO's residential program. Amy misleadingly assured Hanas and his family (and the court) that ICCO would provide rehabilitation and training opportunities, when that clearly was not the case. Without knowing anything about what those rules were (Amy 83; Amy Affid. ¶ 17), Amy effectively threatened Hanas with a felony conviction and imprisonment if he did not conform to ICCO's rules. She told Hanas: "And remember, the rules of Pastor Rottiers' program are the rules of the Court. It's just the same. You screw up that, you screw up this." (Amy Exh. 10, 1/24/03 Tr. p. 13)

Amy will respond that she should escape liability under 42 U.S.C. § 1983 because Judge Ransom's decisions were a "superceding cause" of the constitutional violation Hanas suffered. Amy

cabins the argument in the artificially narrow context of her role in recommending ICCO as a placement for Hanas. The superceding cause argument does not preclude summary judgment for Hanas. First, of course, the record only begins with the January 24, 2003, hearing at which Amy made her recommendation to the Judge. Amy's liability arises from her many actions and failures to act following plaintiff's placement at ICCO.

Second, the superceding cause argument is inapplicable to the undisputed facts here, for the same reasons the Second Circuit rejected an identical superceding cause argument in *Warner v. Orange County Department of Probation*, 115 F.3d 1068 (1997), *re-aff'd*, 173 F.3d 120 (1999), *cert. denied*, 528 U.S. 1003 (1999). There the defendant probation department recommended to the sentencing judge that a drunk driving defendant be placed in Alcoholics Anonymous, in which he was subjected to religious content. The department's argument that the judge's sentencing decision was a superceding cause was rejected because under traditional tort law principles of causation, the department could be held responsible for the natural consequences of its actions. *Id.* 115 F.3d at 1071-1074 (*citing, Malley v. Briggs*, 475 U.S. 335 (1986)(holding that a police officer could not avoid liability for a defective arrest warrant by arguing that the judge's approval was a superceding cause)). In *Warner* the District Court correctly found that because it was reasonably foreseeable that the judge would adopt the probation department's sentencing recommendation, the department could be held liable. *Warner*, 115 F.3d at 1072-1073. The court in *Warner* also addressed the probation department's argument that it was the argument that a private actor (AA) was the immediate cause of the plaintiff's injuries, breaking the chain of causation. Relying again on the foreseeability of exposure to religious content in the AA program, the court (even without factual findings in the trial court) held that the department "was, of course, obligated to use reasonable care to inform itself of

the suitability of therapy programs it recommended to the court . . .” *Id.* at 1074. As discussed above, Stanette Amy made almost no inquiry or investigation of ICCO before recommending it to Judge Ransom.

Amy also may argue that Hanas had a choice, and that he made the decision to be placed at ICCO. However, the only choice Amy presented was between a year at ICCO and months if not years of imprisonment. That was no choice at all. As in *Teen Ranch v. Udow, supra*, the Establishment Clause was violated because Hanas did not have a real option of selecting a non-religiously coercive alternative (other than prison). In *Teen Ranch* the District Court, affirmed by the Sixth Circuit, concluded that the teenage wards did not have a real option of demanding a secular alternative due to their youth and vulnerability, rejecting Teen Ranch’s argument that the wards were not vulnerable and fearful because they had assistance from case workers, attorneys, and others. 389 F. Supp. 2d at 835. Hanas was placed in an equally vulnerable position given his initial choice of prison or ICCO. Hanas was an adult; however Stanette Amy knew that he was immature and suggestible. (Amy 61) Here, the case worker supposedly helping Hanas instead was a party to confronting him with an unconstitutional choice.

The lack of a *bona fide* non-religious option was discussed in *Warner v. Orange County Department of Probation, supra*, where the Second Circuit held that confronting the plaintiff with the choice between attending a religion-themed alcohol treatment program and longer imprisonment violated the Establishment Clause. The options facing the plaintiff in *Warner* were much the same as those facing Joseph Hanas:

The probation department’s policy, its recommendation, and its printed form all directly recommended A.A. therapy to the sentencing judge, without suggesting that the probationer might have any option to select another therapy program, free of religious content. Once sentenced, Warner had little choice but to attend the A.A.

sessions. If Warner had failed to attend A.A., he would have been subject to imprisonment for violation of probation.

*Id.* 115 F. 3d at 1075. Like the plaintiff in *Warner*, Hanas was confronted with the stark choice between involuntary religious indoctrination and incarceration.

**B. Judgment Against Amy Also Should Be Granted Based On Her Complicity In the Constitutional Violations And Her Failure To Avert Them.**

Amy acted independently in furtherance of ICCO's civil rights violations in several respects, making her a co-conspirator under 42 U.S.C. §§ 1985(3). Amy actively and affirmatively reinforced the religious coercion inflicted by ICCO. At the time she had knowledge of many of the incidents of religious coercion at ICCO, Amy reinforced Rottiers' oppressive actions: "I advised Pastor of Judge Ransom's reinforcement of my comments on the record explaining to Joe that any order of the program is in fact the Court's order and he has to follow the rules or face the consequences. Mom is not going to be allowed to sit next to him during church services from now on." (Amy Exh. 6, compliance log, 2/11/03 entry).

Amy also acted independently in attempting to dissuade Chris Hanas from retaining an attorney. When Hanas told Amy she would hire a lawyer to help her son if necessary, Amy questioned why she would spend her money on an attorney when Amy already was an attorney. (C. Hanas Dec. ¶ 16) A few days later, when Chris Hanas raised the idea of hiring a lawyer, Amy suggested it would be a waste of money. (*Id.* ¶ 19) While ultimately Amy did not dissuade Hanas from retaining counsel, as someone with a law degree she certainly should have known that discouraging a criminal defendant from obtaining counsel was unlawful.<sup>7</sup>

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<sup>7</sup> Amy's compliance log reflects that once she became aware that Chris Hanas had retained a Yiannatji, she did support his intention to visit Hanas at ICCO. (Amy Exh. 6, 2/11/03 entry) However, Amy then took no action after learning that Yiannatji had been barred from conferring

In addition to her affirmative actions in violation of Hanas' constitutional rights, Amy also failed to take action to assist Hanas, effectively furthering the violations of constitutional rights by Rottiers, ICCO and Coleman. Amy's failure to act when she had knowledge of the violations and the power to remedy them placed her in concert and conspiracy with the other defendants, in violation of 42 U.S.C. §§ 1985(3) and 1986. Section 1986 is particularly applicable, inasmuch as it supplies a specific remedy against a person who has the power to prevent a violation of civil rights and who knowingly fails to do so.<sup>8</sup>

Amy was inundated with telephone calls, letters and visits from Hanas, his family, his attorney and others complaining about the conditions at ICCO. (Amy 111, 122, 146, 158-159) (Amy testified, "It seemed that everyone was calling constantly for a period of time there." Amy 111) In a nine page letter, Hanas wrote:

I do not reccomend that you do not send no one here if they need help because this place dose nothing but talck about some god that I do not even beleave in and it is against my religon and all they do is god stuff [C. Hanas Dec. Exh. D p. 5]

From those communications, Amy knew that Hanas was being subjected to involuntary religious proselytization and that he was prohibited from practicing his own faith or even keeping a rosary. For example, on a January 26, 2003, Amy suggested to a distraught Chris Hanas that she talk to her

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with his client.

<sup>8</sup> 42 U.S.C. § 1986 provides in pertinent part: "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . ."

Priest, after which Amy spoke to someone from the Hanas' Church and, "[w]e agreed that a deacon from their church will contact Pastor Rotiers [sic] and request permission to deliver the Eucharist on Sundays." (Amy Exh. 6, 1/26/03 entry) A few days later, Amy was given a letter from Chris Hanas informing her that "that 'so called' Pastor spoke to my sister & said the priest or deacon was not allowed to see Joe at all . . . ." (C. Hanas Dec. E) Perhaps if it were isolated, this report would have warranted Amy relying on the Pastor's denial to justify taking no action. However, Amy was informed of many other indications that ICCO was systematically violating Hanas' religious freedom. Amy not only failed to protect Hanas, she exacerbated the wrongs being inflicted on Hanas by reinforcing to Rottiers that his edicts carried the authority of the Drug Court. Amy was a party to and co-conspirator in the First Amendment and Equal Protection violations.

In addition to discouraging Chris Hanas from retaining counsel, by her inaction Amy also contributed to the Sixth Amendment violation. Yiannatji informed Amy that ICCO had barred him from seeing his client. (Yiannatji Dec. ¶ 9) Yet she appears to have taken no action to investigate or remedy that civil rights violation. The foregoing facts are not in material dispute.

#### **IV. HANAS IS ENTITLED TO SUMMARY JUDGMENT AGAINST REGINALD COLEMAN.**

Defendant Coleman played a supporting but not inconsequential role in the violations of plaintiff's civil rights. Coleman's had multiple roles. He acted as an intermediary between the Drug Court and ICCO, since he was involved in the activities of both. In this respect Coleman reinforced the interconnection and nexus between the Drug Court and ICCO. Coleman was a substance abuse counselor ("life skill coordinator") doing business as "Insight". (Coleman 20-23) During the relevant period, Coleman contracted with the Drug Court as a paid drug consultant. (*Id.* 37-39, 45) Coleman also was a minister with Kingdom Heaven Ministries, a "Christ-centered" church that also

provided addiction counseling under the name, Kingdom Refuse. (Coleman 26-29) He provided counseling and educational services to ICCO. (*Id.* 61-64; Rottiers 32-35) Coleman helped introduce ICCO to the Drug Court. (Coleman 66-67; Rottiers 43-44, 61, 64) Regardless of whether Coleman was acting as an agent or employee of the County or the Drug Court, he was directly at the center of the nexus between ICCO and the Drug Court, and therefore he was a state actor.

Coleman was an instrumental part of the systematic violation of Hanas' constitutional rights. He was present at the hearing on January 24, 2003. (Coleman 61, 95) Coleman participated in the religious indoctrination at ICCO. (Rottiers 106) Coleman also appears to have functioned as a counselor and advisor to Joe Hanas and his mother. Chris Hanas stated that she telephoned Coleman soon after Joe Hanas arrived at ICCO to complain that ICCO was "practicing a religion that was not our faith." (She probably was unaware of Coleman's religious role at ICCO). (C. Hanas Dec. ¶ 7) Coleman brushed off the complaint. At that same time Coleman was participating in proselytizing Joe Hanas at ICCO, as is obvious from a January 28, 2003, letter Hanas wrote to his mother: ". . . I have bin thinking a lot about what reggy said about when we where born and we all have are owne destinations and I think that maby god wanted me to be here or in some place for some certon amount of time . . ." (C. Hanas Dec. Exh. A, p. 5) Coleman also acted in concert with Rottiers to prevent Hanas from having access to his attorney. Coleman joined with Rottiers in threatening Hanas with prison if he did not convince his mother to withdraw the attorney, while Hanas was on the telephone with his mother. (J. Hanas Dec. ¶ 16; C. Hanas Dec. ¶ 26, Exh. J; Kropelnitski Dec. ¶ 9)

Summary judgment should be granted against defendant Coleman. As a functionary of the Drug Court and as a partner with Rottiers, Coleman was participated directly in the violations of

Hanas' constitutional rights.

### CONCLUSION AND RELIEF SOUGHT

For the above reasons, plaintiff Hanas respectfully requests that summary judgment be granted in his favor against defendants Rottiers, ICCO and Reginald Coleman as to Counts I through IV of the Complaint, and against defendant Stanette Amy as to Counts I through V of the Complaint.

Respectfully submitted,

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Dated: August 1, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing Motion for Summary Judgment and Brief in Support with the Clerk of the Court using the ECF system on this 1<sup>st</sup> day of August, 2007, which will send notice of this filing to all registered parties via electronic transmission, and by First Class Mail to Reginald Coleman.

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