

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

JOSEPH RAYMOND HANAS,

Plaintiff,

v.

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

Defendants.

Case No: 2:06-CV-10290

Hon. Arthur J. Tarnow

Magistrate Judge Mona K. Majzoub

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**RESPONSE TO DEFENDANT STANETTE AMY'S
MOTION FOR SUMMARY JUDGMENT**

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STATEMENT OF ISSUES PRESENTED

1. Should Stanette Amy's Motion For Summary Judgment Based on Absolute Judicial Immunity Be Denied Where Amy Acted Outside Her Quasi-judicial Function in Counseling Hanas and His Family, Dissuading Hanas from Hiring an Attorney, Failing to Assist Hanas in Transferring to a Program That Was Not Religiously Coercive, and Failing to Protect Hanas from an Unconstitutional Choice Between Religious Freedom and Prison?
2. Should Stanette Amy Be Denied Summary Judgment Based on Qualified Immunity Where it Was Clearly Established That Hanas Had a Constitutional Right to a Non-religiously Coercive Alternative, That Hanas' Free Exercise of His Religious Rights Was Being Abridged, and Where Hanas' Right to Assistance of Counsel Was Being Denied?

CONTROLLING AUTHORITY

Forrester v. White, 484 U.S. 219 (1988)

Achterhof v. Selvaggio, 886 F.2d 826 (6th Cir. 1989)

STATEMENT OF FACTS

Plaintiff Joseph Hanas was twenty years old when he was ordered to complete a one year residential program at the Inner City Christian Outreach Center, Inc., in Flint, Michigan (“ICCO”). Hanas was born in New Jersey and moved with his mother to Grand Blanc, Michigan, at an early age. (Hanas 25-26)¹

Hanas was raised as a Catholic. (C. Hanas Dec. ¶ 6; Hanas 77-82; Kropelnitski Dec. ¶ 3) He attended Catholic school for kindergarten and first grade. (Hanas 78) Hanas completed the ninth grade before quitting school. (Hanas 29) Hanas attended catechism during his early childhood; he was not confirmed. (Hanas 79) Hanas attended Mass with his grandmother on holidays and at other times, but he was not a regular churchgoer. (Hanas 81-82) Plaintiff’s religious identity as a Catholic was closely associated with his grandmother. (Hanas 85-86, 89-90) At the time he was sent to ICCO, Hanas had a rosary that had been given to him by his grandmother hanging on his bedroom wall at home. (Hanas 92)

On January 23 and 24, 2003, Hanas found himself in the courtroom of Genesee County Circuit Judge Robert Ransom. Ransom presided over the Genesee County Drug Court, a program in which certain defendants convicted of drug offenses could be placed in substance abuse treatment in lieu of prison, with the opportunity to have the conviction dismissed upon successful completion of the program. Hanas had been a Drug Court participant for a period of months pursuant to an agreement with the Prosecutor’s Office, entered into as a means of resolving a charge of possession of marijuana with intent to deliver. He was before Judge Ransom in January, 2003, after being

¹ Deposition excerpts and exhibits are identified by the name of the deponent followed by the page or exhibit numbers. Hearing transcripts are cited by their deposition exhibit number, date of hearing and transcript page number(s).

ticketed on a charge of being a minor in possession of alcohol, which was a violation of Drug Court requirements. Previously Hanas had voluntarily, at his family's urging, placed himself in two Salvation Army programs, both of which expelled him because he had failed to follow the rules. (Amy Exh. 10, 1/24/03 Tr. p. 10) By January of 2003, however, Hanas was attending daily counseling sessions, some of which were conducted by defendant Reginald Coleman, who served the Drug Court as a consultant. (Amy Exh. 10, 1/24/03 Tr. pp. 3-4) Stanette Amy was Hanas' Drug Court case manager. (Amy 10-11) Amy had a Masters Degree in social work. (Amy 30) Beginning in March, 2002, Amy had Joseph Hanas as a "client" and provided Hanas and his family with counseling, guidance and advice. (Amy 30-33)

At the hearing on January 24, 2003, Judge Ransom asked Amy for her recommendation as to an appropriate placement for Hanas. (Amy Exh. 10, 1/24/03 Tr. p. 7) Amy urged a residential program. She suggested the residential program at ICCO Christian Outreach, noting that a bed was available as of that morning.² Amy made her recommendation based on her assessment of Hanas' emotional and psychological condition, employing her skills as a social worker. Amy considered that Hanas "was very immature and very reliant on family and [had] almost no independence, no independent thinking." (Amy 61) It appears that an important consideration was the fact that Hanas did not have money to pay for a fee-based program. (Amy 58-59; Exh. 16, 2/27/03 Tr. pp. 6-7)³ Amy testified that Pastor Dwight Rottiers, the director of ICCO, was a regular attendee at the Drug Court and had offered his services in court a number of times. (Amy 61-62)

² Rottiers testified that the mens' residential program at ICCO also is called the Josiah Mens Home. (Rottiers 10) It was a part of ICCO and is referred to as ICCO here.

³ Defendant Coleman testified that there were other non-fee based residential programs in the area besides ICCO. (Coleman 96-97)

Amy did very little investigation of ICCO before recommending it. Her knowledge about ICCO appears to have been based on what Rottiers had said about the program in court, on a brief phone call with Rottiers before the hearing (the details of which she could not recall), and possibly on a brief visit to ICCO's lobby. (Amy 63-69, 76- 82) Amy believed that ICCO offered mental health and drug counseling to its residents, although she could not recall the source of her information. (Amy 81-82) Judge Ransom ordered Hanas to begin a one year residential program at ICCO that day. (Amy Exh. 10, 1/24/03 Tr. pp.7-9) Plaintiff was the first Drug Court defendant to be placed at ICCO.

Judge Ransom and Stanette Amy repeatedly admonished Hanas to follow the rules at ICCO. At the time, Amy had no knowledge of ICCO's rules and policies. (Amy 83; Amy Affid. ¶ 17) Judge Ransom warned Hanas that if he did not follow the rules and successfully complete the ICCO program, he would go to prison:

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, you'll graduate, you'll -- you'll be clean, you'll be out of trouble, you'll rid all of the anxiety that you have with the criminal justice system. That's the prospect if you follow the rules. If you don't follow the rules, the prospect you're going to come back here and you're going to go to prison. (Amy Exh. 10, 1/24/03 Tr. p. 12)

Stanette Amy explained to Hanas that Pastor Rottiers effectively exercised the authority of the court:

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." (*Id* p. 13)

The Judge continued: "We made a deal with Pastor Rottiers. He's a partner in the Drug Court." (*Id*)

ICCO is affiliated with the Kingsway Fellowship International Church, of which Rottiers is an ordained pastor. (Rottiers 7, 22-23) ICCO is a Pentecostal church. According to Rottiers, it is

Pentecostal and also “nondenominational.” (Rottiers 55)⁴ Rottiers defined the tenets of Pentecostalism as: “. . . using the gifts of the spirit, laying on of hands, believing in healing, tongues and interpretations.” (Rottiers 57) Rottiers testified that ICCO provided no in-house substance abuse counseling, but that he referred residents to a religious substance abuse counseling program called Kingdom Refuge, operated by defendant Reginald Coleman, which was associated with the Kingdom of Heaven Ministries. (Rottiers 31-36) Rottiers testified that Coleman helped him introduce his “Christ-centered” residential program to the Drug Court. (Rottiers 43-44, 61, 64) Rottiers viewed ICCO as a good fit with the Drug Court “if they’re looking for a Christ centered program, you know, they don’t want to go into a secular program.” (Rottiers 64)

Hanas entered the ICCO program immediately after the hearing. Stanette Amy telephoned plaintiff’s mother, Chris Hanas, to tell her that Hanas had been sent to ICCO for a one year residential program. Amy told her that ICCO would provide job training, drug and alcohol rehabilitation, and GED preparation. (C. Hanas Dec. ¶ 3)

When Chris Hanas and her sister, Diane Kropelnitski, arrived at ICCO later that day with plaintiff’s belongings, they were met by an “overseer.” Overseers were residents of the program who were given supervisory responsibilities under the direction of Pastor Rottiers. (J. Hanas Dec. ¶ 7; Hanas 148; Holt Dec. ¶ 8; Rottiers 58-59, 130) The overseer informed them that the ICCO program consisted mainly of Bible study and religious services, that there was no drug or alcohol treatment, and that Joe Hanas would have no contact with anyone outside the program. (C. Hanas ¶ 4) Concerned about what she had been told, Chris Hanas telephoned Rottiers the following day.

⁴ Kingsway’s web site states: “KFI has its roots in the ‘Pentecostal persuasion’ . . .” (accessible at: <http://www.kingswayfellowship.org/>)

Rottiers told Chris Hanas that her son would have no contact with the secular world for ten months, and that she would not be allowed to visit her son other than brief contact before church services. Rottiers said that Hanas could not have his GED study books, that his reading would be limited to ICCO's materials and that he would only be permitted to listen to Christian music tapes.⁵ (*Id.* ¶ 5)

ICCO strictly limited its residents' contact with the outside world. Joe Hanas testified, ". . . in the program you're not allowed to have any contact with the outside world." (J. Hanas 58, 59; J. Hanas Dec. ¶ 12; *see also* Malinowski, Dec. ¶ 3 ("Someone told me that I would be 'locked in here.'")) ICCO's printed rules stated that no visitors were allowed for the first ninety days. (J. Hanas Dec. Exh. A; Hanas Exh. 7) Hanas was informed that his mother and girlfriend could visit him only briefly, during church services (until he was later told that he could not see them at all). (J. Hanas Dec. ¶ 12) The rules also stated that Hanas was "NOT eligible for a pass for 10 months." (J. Hanas Dec. Exh. A)

Within its cloistered environment, the ICCO program inculcated residents with Pentecostal Christian beliefs and practices. Defendant Rottiers testified:

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]

At the time he entered ICCO, Hanas was given an agreement to sign, obligating him to follow stated rules.⁶ Among the rules was the following: "I will participate in all aspects of the program (bible

⁵ The written rules given to Hanas stated: "No secular music may be played." (J. Hanas Dec. Exh. A)

⁶ Above the list of rules the agreement stated: "Whenever people live together, there is always some understanding needed as to what is expected of each person. For us at the Josiah Program, this understanding is expressed in written form in the following agreement. It is important to understand that following these guidelines does not make a person a Christian. This agreement seeks to promote equal opportunity for growth, and equal responsibility. By signing this agreement,

classes, devotions, prayer, work, recreation, fast day, etc.).” (J. Hanas Dec. Exh. A) Joshua Holt, another resident of ICCO during the time Hanas was there, stated, “The head of the ICCO program, Pastor Rottiers, told us that the program was based on the Bible and the goal was to make us into ‘perfect Christians’ or true worshipers of God.” (Holt Dec. ¶ 4)

While at ICCO, Hanas and the other residents were immersed in an intensive program of Bible study. Residents studied the Bible every day, usually for several hours. The residents were tested daily on the scriptural lessons. (J. Hanas Dec. ¶ 10, Exh. B; Hanas pp. 150-152; Holt Dec. ¶ 5) Hanas understood that he was required to attend the Bible classes. (Dec. ¶ 10; see also, Holt Dec. ¶ 5) ICCO’s written “protocol” included the following: “You must come to class prepared with your bible, paper, pens.” (J. Hanas Dec. Exh. A) Defendant Coleman taught some of the classes. (Rottiers 106) According to Rottiers, “It was all Biblical teaching, right from the word of God.” (Rottiers 107)

ICCO required Hanas and other residents to attend services in the church attached to the dormitory. (J. Hanas Dec. ¶ 11; Holt Dec. ¶ 5; Rottiers 107) The mandatory services took place every Wednesday morning and twice on Sundays. (*Id*) Hanas and other residents also prayed in the sanctuary first thing every morning. (J. Hanas Dec. ¶ 11) The services had all the elements of Pentecostal worship. Services featured people speaking in tongues, the Pastor laying his hands on parishoners and claiming to heal them, and people lying on the floor. (J. Hanas Dec. ¶ 5; C. Hanas Dec. ¶ 6) Hanas was told that he should go to the altar and have the Pastor lay hands on him, and that he should declare himself saved by the Lord (however, he did not do so). He was encouraged

I am agreeing to live by these rules in order to promote peace and maximizes [sic] the benefit each person can receive here.” (J. Hanas Dec. Exh. A)

to be part of the group by participating in the singing and other parts of the service. Hanas' understanding was that the Pastor would be angry if he did not conform to these expectations. (J. Hanas Dec. ¶ 11) Josh Holt states in his Declaration that Rottiers told the residents, individually and in groups, to let him lay hands on them and then fall down and speak in tongues. (Holt Dec. ¶ 6) Holt stated: "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." (*Id.*) Holt stated: "Pastor Rottiers told us that ICCO was a Pentecostal Church and that we were Pentecostal while we were there." (*Id.* ¶ 7)

The program's rules and requirements were enforced strictly. Hanas was placed on a "word fast" after an unauthorized excursion with another resident and an overseer. (J. Hanas Dec. ¶ 14; Hanas 137-138) During the word fast, Hanas was forced to spend three days in silence, reading the Bible. Joshua Holt also was put on a word fast as punishment for asking to talk to his probation officer. (Holt Dec. ¶ 10)

Despite the fact that Stanette Amy had assured Chris Hanas that her son would receive drug and alcohol rehabilitation (as well as job and GED training) at ICCO, none of that was provided to Hanas.⁷ ICCO had no staff offering rehabilitation or training, and it permitted residents to obtain those services from outside sources only after they were in the program for ten months. (J. Hanas

⁷ At the January 24, 2003, hearing, Amy told Judge Ransom that Hanas would be given rehabilitative job training at ICCO (Amy Exh. 10, 1/24/03 Tr. p. 7) and that Rottiers had agreed to "working the Drug Court programming in" at ICCO (*Id.* p. 14). Prior to being sent to ICCO, Hanas had been attending daily counseling and drug and alcohol rehabilitation. (*Id.* p. 4) That ended when Hanas was assigned to ICCO.

Dec. ¶ 9; Holt Dec. ¶ 4; Rottiers 31-32)⁸

Shortly after he arrived at ICCO, an overseer confiscated Hanas' rosary and prayer book. (J. Hanas ¶ 8) Hanas' understanding was that the items were considered "contraband" that residents were not allowed to have under ICCO's rules. (Hanas 74-75) The overseer told Hanas he could not keep the rosary and prayer book, and that they were "witchcraft." (J. Hanas Dec. ¶ 8; Hanas 146-148; 159-165) Joshua Holt witnessed the incident. (Holt Dec. ¶ 8; Hanas 147) Hanas recalled that he told Rottiers that his rosary and prayer book had been confiscated, and that the items later were returned to him. (J. Hanas Dec. ¶ 8; Hanas 149)

Another resident of the program, Donald Malinowski, had a similar experience. In February, 2003, during the time Hanas was at ICCO, Malinowski was placed at ICCO by Judge Ransom. (Malinowski Dec. ¶ 2) When Malinowski arrived at the ICCO dormitory, residents were in their beds reading the Bible. Malinowski, a practicing Catholic, had brought his rosary and prayer book. Soon after he unpacked them, he was called to Rottiers' office, where Rottiers told him he could not practice Catholicism at ICCO. (*Id.* ¶¶ 3-5) After Malinowski insisted that he would not stop practicing Catholicism, Rottiers immediately expelled him from the program, telling him that practicing his religion was forbidden. (*Id.* ¶¶ 5, 7)⁹ Malinowski completed his Drug Court residential program at a Catholic Church across the street, where he was provided with drug and

⁸ Rottiers testified that ICCO provided substance abuse counseling through outside sources at the time Hanas was in the program, although he could not recall which organization provided the services. (Rottiers 49-53)

⁹ Malinowski reported the incident, and the fact that he had been given residence and treatment at St. Michael Church, to Stanette Amy, who was his case manager. (Malinowski Dec. ¶ 6) Later on, at the March 13, 2003, hearing at which Hanas was sentenced, Malinowski reported the events at ICCO to Judge Ransom in open court. (*Id.* ¶ 7)

alcohol treatment, at no cost. (*Id.* ¶ 6)

Hanas and his family attempted to arrange for the Priest at Holy Family to visit ICCO to give Hanas Holy Communion. (J. Hanas Dec. ¶ 13; Hanas 114-115; Kropelnitski Dec. ¶ 5) Hanas felt that he wanted to see his Priest. (J. Hanas Dec. ¶ 13)¹⁰ It is not clear how Rottiers became aware of the plan, but he became angry and told Hanas that if a Priest came to visit he would be expelled from ICCO. (*Id.*; Hanas 119) Rottiers ordered Hanas to call his family and tell them to call off the visit. (Hanas 119-120, 142-143; J. Hanas Dec. ¶ 13; C. Hanas Dec. ¶ 15) In a letter Hanas gave to his mother on February 2, 2003, Hanas wrote:

I just got off the phone with Diane they do not usually let anyone use the phone before 3 months but the pasture wanted me to call her back and tell Diane to not let the priest come give me communion and she got all mad at me because she doesn't know that I can't say nothing to the pasture. I do not want to have the pasture get mad at me he was kind of mad he said he was going to call Stanette Amy up and get this settled because he will not let that happen. [C. Hanas Dec. Exh. C, ¶ 15]

Hanas' aunt, Diane Kropelnitski, received a telephone call from Rottiers, in which the Pastor told her that he would not permit any other religious clergy at ICCO, and that when Joe became a "ward of the court" he gave up his right of freedom of religion. (Kropelnitski Dec. ¶ 5; C. Hanas ¶ 14) Kropelnitski recounted this incident clearly in her Declaration, and in an Affidavit that was filed in the Drug Court. (Kropelnitski Dec. Exh. A) After learning of her sister's discussion with Rottiers, Chris Hanas called the Pastor to ask why her son could not see a Priest. Rottiers told her that other religions were not allowed at ICCO, and that the Judge was aware of the rule. (C. Hanas Dec. ¶ 14)

On the Sunday following Hanas' arrival at ICCO, his mother attended a service there. She

¹⁰ Stanette Amy's Compliance Log indicates that she spoke on the telephone with Ellen Venus at Holy Family Church, and it was agreed that a Deacon would contact Rottiers and request permission to administer the Eucharist to Hanas on Sundays. (Amy Exh. 6, 1/26/03 entry)

was upset because the service was quite different from the Catholic Mass her son was used to. Hanas told his mother that he was required to attend the services. Afterwards, Chris Hanas telephoned Coleman and told him that ICCO was “practicing a religion that was not our faith.” (C. Hanas Dec. ¶ 7) Coleman said there was nothing wrong with ICCO. (*Id.*) The next morning, Chris Hanas visited Amy at her office and complained that ICCO was practicing a different religion, and that she thought it was a “cult.” She also told Amy there was no substance abuse treatment at ICCO. (C. Hanas Dec. ¶ 8) She pleaded with Amy to investigate ICCO, and asked that her son be transferred to another program. Amy demurred. (*Id.*) Amy’s compliance log records the discussion. (Amy Exh. 6, 1/26/03 entry)

After attending more services and receiving letters from her son, Chris Hanas became more determined to help Hanas transfer to a different program. She told Amy repeatedly that she could gather \$3,000 or \$4,00 if that was necessary to transfer Hanas. (C. Hanas Dec. ¶ 11) Amy told her the money would not help. (*Id.*) On January 30, 2003, Chris Hanas spoke with Joanne Reen, a social worker at the Salvation Army program, who told her that she could accept Joe Hanas and provide mentors and substance abuse treatment. (C. Hanas Dec. ¶ 12) Reen later verified this in a Affidavit filed with the Drug Court (Yiannatji Dec. Exh. D) Amy’s compliance log recorded a phone call from Chris Hanas stating that ICCO had no drug rehabilitation, and that Amy had acknowledged that fact. (Amy Exh. 6, 1/30/2003 entry) Increasingly desperate, Chris Hanas and Diane Kropelnitski visited Judge Ransom at Drug Court, where they gave the Judge a letter written by Kropelnitski describing what she called the “almost cultist religious reprogramming” at ICCO. (Kropelnitski Dec. ¶ 8, Exh. B; C. Hanas Dec. ¶ 12) Judge Ransom tried to reassure them and left without taking the letter; Kropelnitski took it home.

On February 3, 2003, the District Court Judge hearing Hanas's ticket for minor in possession asked whether ICCO was providing substance abuse counseling. An overseer answered, yes. Rottiers and Amy were in the courtroom and said nothing. (C. Hanas Dec. ¶ 16) Outside the courtroom, Chris Hanas told Amy again that ICCO did not provide rehabilitation, and she repeated the complaint about religious indoctrination. When Hanas told Amy she would hire a lawyer to help her son if necessary, Amy asked her why she would spend her money on an attorney when Amy already was an attorney. (*Id.*)

That day Joe Hanas wrote a nine page letter to Stanette Amy, imploring her to meet with him privately so that he could tell her about ICCO without an overseer listening. (C. Hanas Dec. Exh.

D) Hanas wrote:

I do not feel that this place would ever help me at all. 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 [*Id.* pp. 1-2]

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 [*Id.* p. 5]

Chris Hanas delivered the letter, along with a letter of her own (C. Hanas Dec. Exh E), to Amy's office the following day.¹¹ In a follow up telephone call, Amy told Chris Hanas that she would not give the letters to a judge until Ransom returned from his vacation. When Hanas stated her intention to hire an attorney, Amy dismissively told her "that was fine, if I wanted to waste my money." (C. Hanas Dec. ¶ 19)

¹¹ Chris Hanas' letter repeated many of the things that she had told Amy on the telephone and in person many times. The letter described one of the Pentecostal services at ICCO and recounted Rottiers' refusal to allow a Priest or Deacon to visit Joe Hanas and the confiscation of Hanas' rosary.

The same day, Chris Hanas hired attorney John Yiannatji to help extricate her son from ICCO.¹² (C. Hanas Dec. ¶ 20; Yiannatji Dec. ¶ 2) Yiannatji telephoned Rottiers to ask why Hanas could not see a Priest at St. Michael Church across the street from ICCO. Rottiers derided St. Michael's as a "den of iniquity" and hung up. (Yiannatji Dec. ¶ 4)

Rottiers prevented Yiannatji from having any meaningful contact with his client. When Yiannatji attempted to consult with Hanas at ICCO, he and his client were put in a small room with two overseers within listening range, where they could not talk freely. (Yiannatji Dec. ¶ 5) Yiannatji returned the next day and threatened to seek a court order. Yiannatji was given a few minutes with Hanas in Rottiers' office. They talked in whispers. (*Id.* ¶ 6) That was the last time Yiannatji was able to speak with his client until Hanas was confined to the County jail. (*Id.* ¶ 8; Hanas 57-58) Yiannatji made repeated unsuccessful attempts to contact Hanas. He was told by ICCO personnel that he was not permitted to see his client, and he was turned away when he returned to ICCO to try to gain entry. (Yiannatji Dec. ¶ 7) In a February 11, 2003, letter to his girlfriend, Hanas told her that after a phone call by his attorney, Rottiers had told him to pack his things. (C. Hanas Dec. Exh. II) 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." (*Id.* p. 2)

Yiannatji made constant and frequent contact with Stanette Amy, by telephone and by showing up at her office. He informed Amy that ICCO had barred him from seeing his client.

¹² Amy, Coleman and Judge Ransom all testified in their Affidavits that Yiannatji was present at the January 24, 2003, hearing in which Hanas was sent to ICCO. (Amy Affid. ¶¶ 15, 16; Coleman Affid. ¶¶ 14, 15; Ransom Affid. ¶¶ 22, 23) These witnesses relied on the hearing transcript, which erroneously identified Yiannatji as Hanas's attorney at the hearing, rather than accurate recollections. Yiannatji had no involvement in Hanas' case before February 7, 2003. (C. Hanas Dec. ¶ 20) The attorney at the hearing may have been a court-appointed lawyer.

(Yiannatji Dec. ¶ 9) He also told Amy that ICCO did not provide substance abuse treatment and that Hanas was being coerced. Amy's only response was to tell Yiannatji that she would look into it. (*Id.*) According to Yiannatji's Affidavit filed in Genesee Circuit Court, when he asked Amy if she would refer other defendants to ICCO, she responded, "only if they were southern Baptist." (*Id.* Exh. B, ¶ 9)

After Yiannatji made his appearance at ICCO, Hanas was subjected to an ongoing campaign of intimidation clearly aimed at curbing further interference by Yiannatji and Chris Hanas. Hanas was pressured on at least two occasions to call his mother and convince her to withdraw Yiannatji, with the overt threat of expulsion from ICCO and 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 Coleman both were threatening plaintiff with prison while he was on the telephone with them. (C. Hanas Dec. ¶ 26)

Rottiers then cut Hanas off from his family. Rottiers told Chris Hanas that she and Yiannatji could no longer visit Joe Hanas. (C. Hanas Dec. ¶¶ 24, 26; Kropelnitski Dec. ¶ 9) Rottiers and others at ICCO told Hanas that he would be in trouble if his mother or girlfriend attempted to visit him. (J. Hanas Dec. ¶ 17) Hanas wrote to his mother that, "the pasture dos not want you at church or cristina . . . things are just getting worst . . . I am going to go to prision if you keep messing with paster." (Chris Hanas Dec. Exh. F)¹³ Chris Hanas attempted to make contact with her son at a church service on February 19, 2003, but she was forcibly deterred by overseers who physically restrained her. (C. Hanas Dec. ¶ 29) Thereafter she was unable to communicate with her son. (C.

¹³ In another letter Hanas wrote: "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. . . ." (*Id.* Exh. G)

Hanas Dec. ¶¶ 30, 31)

On February 18, 2003, Hanas was taken to the courthouse for a meeting with Amy. It appears that Chris Hanas and John Yiannatji were to attend, but the meeting was rescheduled without their knowledge. (C. Hanas Dec. ¶ 28, Exh. K; Amy Exh. 6, 2/18/03 entry) Amy met with Hanas and told him that he would be sent to jail and then boot camp. Hanas left with the impression that he would complete the Drug Court program and avoid a felony conviction. (J. Hanas ¶¶ 28, 29)

Yiannatji filed a motion to have Hanas released from ICCO and to have his case reassigned. Judge Ransom heard the motion on February 26 and 27, 2003. Yiannatji told the Judge that ICCO was preventing him from talking to his client and had punished Hanas for having an attorney. (Amy Exh. 16, 2/27 Tr. pp. 3, 10) Yiannatji objected to the lack of substance abuse treatment. The Judge said, "Inner City is a residential program. It is not a drug treatment program. It is a residential program. It is a faith based residential program." Yiannatji replied, "But that's one of the objections." (*Id.* p. 4, see also, p. 11) (When Judge Ransom asked Amy about the treatment program Hanas was supposed to attend, she replied that Hanas would have to be evaluated for one. (*Id.* p. 4) Yiannatji asked for an order allowing Hanas to see a Priest or Deacon. When the Judge questioned Amy, she answered: "Pastor Rottiers said that they were -- they would not have the other faiths coming in and each doing their own thing while he's at the church." (*Id.* p. 9) Judge Ransom asked, "When is he free to go to church where he wants to go?" Amy answered, "I would think in 90 days. He's not required to participate in that church." (*Id.* p. 9) The hearing concluded with Judge Ransom setting another hearing in two weeks. However, the Judge apparently had decided by that time that Hanas would be removed from Drug Court and sentenced. (Amy 161-162, Exh. 17)

Hanas returned to Judge Ransom's courtroom on March 13, 2003. Hanas' attorneys (who

included two local attorneys provided by the ACLU) argued that Hanas' Free Exercise right had been violated at ICCO. (Amy Exh. 18, 3/13/03 Tr pp. 12-13, 19-20) Yiannatji requested an evidentiary hearing, and informed the Judge that Chris Hanas, Diane Kropelnitski, and Leonard Accardo (a private investigator he had hired) were in the courtroom. (*Id.* pp. 14, 19) Judge Ransom was asked to consider a "secular alternative" to ICCO. (*Id.* pp. 15, 20) Instead Judge Ransom sentenced Hanas to jail, boot camp (pending a psychological evaluation) and then the New Paths Men's Program, followed by four years of probation. He left open the possibility that Hanas could be returned to Drug Court (and thereby have the felony conviction dismissed) following successful completion. (*Id.* pp. 28-30) On January 22, 2004, Judge Ransom heard Hanas' motion for reinstatement to the Drug Court. Despite showings that Hanas had successfully completed boot camp and the New Paths program, and a glowing pre-sentence report, Judge Ransom denied Hanas re-entry into the Drug Court, retaining the felony conviction. (Nickelhoff Dec. Exh. 1/22/04 Tr.)

At the January 22, 2004 hearing, Judge Ransom announced that the court had stopped sending defendants to ICCO as a result of Hanas' experience there. (*Id.* pp. 6-7)

ARGUMENT

AMY'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED, BECAUSE SHE IS NOT ENTITLED EITHER TO QUASI-JUDICIAL IMMUNITY OR TO QUALIFIED IMMUNITY, AND BECAUSE THE EVIDENCE DOES NOT SUPPORT JUDGMENT FOR AMY AS A MATTER OF LAW.

A. Amy Does Not Enjoy Absolute Immunity.

It is telling that defendant Amy's motion for summary judgment ignores any events after January 24, 2003, when Joseph Hanas was placed at ICCO -- attempting to end the novel after the first chapter. (Motion and Brief, p. 5) Amy played a pivotal role in the actions that deprived Hanas of his constitutional rights. As a Drug Court case worker, Amy exercised quasi-judicial functions when she assisted and advised Judge Ransom. However, Amy's position as case manager included non-judicial functions, such as serving as an advisor and "social worker." In the latter capacity, Amy was not shielded by absolute immunity when she failed to protect Hanas from facing the coercive and unconstitutional choice between his religious freedom and prison, counseled Hanas and his family to keep him at ICCO while knowing that Hanas' rights were being violated, attempted to dissuade Chris Hanas from retaining an attorney, failed to assist Hanas in transferring to a non-coercive program, and failed to investigate the complaints about ICCO and report them to the court. These acts and omissions extend beyond the reach of quasi-judicial immunity.

Defendant Amy has the burden of justifying the application of absolute immunity. *See Butz v. Economou*, 438 U.S. 478, 506-07 (1978). It is a weighty burden because it must be presumed that qualified immunity, rather than absolute immunity, is the appropriate level of protection for government officials carrying out their duties. *Burns v. Reed*, 500 U.S. 478, 486 (1991). Under the applicable functional analysis, the fact that Amy played a variety of roles informs the determination

of whether she is immunized from the consequences of her actions. Quasi-judicial immunity is an extension of absolute judicial immunity. It applies “to those persons performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune.” *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994). Courts take a functional approach to quasi-judicial immunity, in which the court examines the function performed rather than the actor’s identity or job title. (*Id.*) A functional approach is appropriate because a court must be “quite sparing in [its] recognition of absolute immunity, and refuse[] to extend it any further than its justification would warrant.” *Burns v. Reed*, *supra*, at 486-87 (internal quotation marks and citations omitted); *see also Achterhof v. Selvaggio*, 886 F.2d 826, 829 (6th Cir. 1989)(noting that, “the [Supreme] Court has been reluctant . . . to let this functional, analogical approach greatly expand the scope of absolute immunity.”).

Quasi-judicial immunity should not apply because Amy was not performing a judicial function when she violated plaintiff’s rights. Judges, court officers and employees are not absolutely immune from suits when they perform non-judicial functions. *Forrester v. White*, 484 U.S. 219 (1988) (state judge did not have immunity regarding the demotion and firing of a probation officer because those actions were not judicial in nature). Amy exercised both quasi-judicial and *non-judicial* functions. Her non-judicial role is reflected in her testimony that she regarded and referred to Hanas as her “*client*.” (Amy 29)¹⁴ Though she was an attorney, Amy’s background and training was as a social worker. (Amy 30) Amy agreed that she was counseling Hanas as a social worker might counsel a client. (Amy 30-34, 61) In her efforts to encourage Hanas to follow Drug Court

¹⁴ In her deposition Amy testified as follows: “Q: . . . you had kind of a dual and one was to help the court and the other was to help the defendant? A: Yes.” (Amy 29-30)

requirements, Amy said: “I was not a Drug Court official. I was just a social worker.” (96) The evidence overwhelmingly shows that Hanas and his family looked to Amy for counsel and assistance.¹⁵

In *Holloway v. Brush*, 220 F.3d 767, 776 (6th Cir. 2000) (*en banc*), the Sixth Circuit held that a social worker was not entitled to quasi-judicial immunity for her out-of-court actions as a case worker. “[S]ocial workers are absolutely immune only when they are acting in their capacity as *legal advocates* -- initiating court actions or testifying under oath -- not when they are performing administrative, investigative, or other functions.” (emphasis in original); *see also, Achterhof v. Selvaggio, supra*, at 830 (holding that a county social services worker’s investigatory and administrative acts were not protected by quasi-judicial immunity); *O’Donnell v. Brown*, 335 F. Supp. 2d 787, 826-827 (W.D. Mich. 2004) (denying quasi-judicial immunity to protective services workers who helped effect an improper removal of children); *Thomas v. St. Vincent & Sarah Fisher Center*, 2006 WI. 2418974 at *7 (E.D. Mich. 2006)(J. Roberts)(denying quasi-judicial immunity where social services workers’ supervision of and responsibility to protect a state ward was “not judicial, prosecutorial, or otherwise ‘intimately associated with the judicial phase of proceedings’”).

While acting in her non-judicial role, Amy violated Hanas’ First and Sixth Amendment rights. Hanas and his family looked to Amy to help them as an advocate and advisor. Amy’s failure to do so in the face of obvious Free Exercise and Establishment Clause violations was not protected by absolute immunity. Amy did almost nothing to inform herself about the practices at ICCO before recommending that Hanas be sent there. Once alerted to what was happening at ICCO, Amy should

¹⁵ Amy testified that “[m]y client was Joe,” but in addition to counseling Joe Hanas she had “almost daily” telephone contact with Chris Hanas. (Amy 30) Amy testified that her role was to provide “counseling” and “guidance” to her “client.” (Amy 32-33)

have investigated further, at the very least, and then acted to remedy the situation. Instead, Amy aided and reinforced Rottiers' coercion. Amy's compliance log reflects that on February 11, 2003, she told Rottiers: "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) At that time, Amy knew from repeated contacts that Rottiers was forcing Hanas to practice another religion and he was prohibiting Hanas from practicing his own faith. (See, for example, Hanas' nine page letter to Amy of February 3, 2003, and the accompanying letter from Chris Hanas. (C. Hanas Dec. Exh. D, E, ¶¶ 8, 11, 12, 16-19)

Amy's efforts to dissuade Chris Hanas from obtaining legal assistance (again seemingly in league with Rottiers) also was beyond the ambit of any quasi-judicial function. When Chris Hanas told Amy that she was going to hire an attorney to help her son, Amy's response was to ask why she would spend her money on an attorney when Amy already was one. (C. Hanas Dec. ¶ 16) Amy's suggestion that she herself was functioning as plaintiff's advocate underscores her non-judicial role.

In many instances, Amy was acting unilaterally and not as an agency of the judge or the court. For example, Amy made the decision, apparently under no direction or instruction, to rebuff the efforts by Hanas, his mother and his attorney to bring the situation to a judge's attention, deciding on her own to wait until Judge Ransom returned from vacation. A social worker's unilateral actions are not entitled to absolute immunity. *See Holloway v. Brush supra; Meyers v. Contra Costa Dept. of Soc. Services*, 812 F.2d 1154, 1157 (9th Cir. 1987)(denial of absolute immunity to social worker who unilaterally ordered a father to stay away from his home prior to a scheduled court hearing).

The scope of Amy's functions as a case worker was not nearly as circumscribed as Amy

portrays in her motion -- particularly given her effort to truncate the record after the first hearing. Amy has not met the formidable burden of establishing absolute immunity.

B. Amy Is Not Entitled To Qualified Immunity.

Because Amy violated clearly established constitutional rights in exercising her discretionary functions, she cannot claim the cover of qualified immunity. The test is two-pronged: first, taken in the light most favorable to Hanas, do the facts alleged show that Amy's conduct violated a constitutional right? Second, is the right clearly established? *Silberstein v. City of Dayton*, 440 F.3d 306, 311 (6th Cir. 2006)(quoting, *Saucier v. Katz*, 533 U.S. 194 (2001)). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." (*Id.*) To determine whether a right is "clearly established," courts look to the federal constitutional, statutory or case law that existed at the time of the event. *Dominique v. Telb*, 831 F.2d 673, 677 (6th Cir. 1987). As noted earlier, Amy conveniently eases her burden of showing that she is blameless for any violation of clearly established constitutional rights by cutting the factual record short after the January 24, 2003 hearing.

1. Hanas' Right To Be Free of Religious Coercion Under the Establishment Clause Was Well Established.

A reasonable official in Amy's position would have known that Joseph Hanas' right to be free from religious coercion under the Establishment Clause was being violated. "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion, or its exercise. . . ." *Lee v. Weisman*, 505 U.S. 577, 587 (1992). By early 2003, an extensive body of case law established that penal programs requiring religious

practice or adherence under threat of punishment are clearly unconstitutional. *E.g., Warner v. Orange County Dep't of Probation*, 115 F.3d 1068 (2d Cir. 1997), *reaff'd after remand*, 173 F.3d 120 (2d Cir. 1999)(holding unconstitutional requirement that an atheist probationer attend religiously-imbued Alcoholics Anonymous program where the penalty for noncompliance was revocation of probation and imprisonment); *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996)(requirement that inmate attend religiously-based Narcotics Anonymous program where no alternatives were offered and non-attendance jeopardized parole eligibility violated First Amendment); *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."); *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); *Griffin v. Coughlin*, 88 N.Y.2d 674; 673 N.E.2d 98 (N.Y. Ct. App. 1996), *cert. denied*, 519 U.S. 1054 (1997)("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”); *Scarpino v. Grosshiem*, 852 F. Supp. 798 (S.D. Ia. 1994); *Arnold v. Tennessee Board of Paroles*, 956 S.W.2d 478 (Tenn. 1997).¹⁶

The qualified immunity analysis in *Armstrong v. Beauclair*, 2007 WL 1381790 (D. Idaho 2007), is instructive. There, the plaintiff inmate complained of compulsory attendance at Alcoholics Anonymous and Narcotics Anonymous programs. The District Court found that although neither the Ninth Circuit nor the Supreme Court had ruled directly on the constitutionality of coerced participation in religiously-imbued drug and alcohol treatment, the Supreme Court’s decision in *Lee v. Weisman*, as well as numerous circuit and district court decisions, meant that, “it was clearly established -- as early as 1997 when two circuits had taken the same position and well before June 2005 -- that forced participation in AA/NA violates the Establishment Clause.” (*Id.* at *15).

2. Hanas’ Right To Free Exercise of His Religious Beliefs Was Clearly Established.

Amy knew full well that Hanas’ rosary and prayer book had been confiscated, that his Catholic religion had been derided as “witchcraft,” and that his request to see a Priest or Deacon and receive the Eucharist had been denied. It has long been held that inmates retain the right to free exercise of their religion while in the state’s custody. *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987); *Cruz v. Beto*, 405 U.S. 319, 321 (1972)(*per curiam*); *Cooper v. Pate*, 378 U.S. 546 (1964). More specifically, “[a] prisoner’s possession of. . . personal property relating to religious

¹⁶ Hanas’ right to be free of religious coercion also is established by numerous post-2003 cases. See e.g., *Teen Ranch v. Udow*, 389 F. Supp. 2d 827 (W.D. Mich. 2005); *aff’d* 479 F.3d 403 (6th Cir. 2007); *Bobko v. Lavan*, 2005 WL 1309072 (M.D. Pa 2005), *aff’d by* 157 Fed. Appx. 516 (3rd Cir. 2005) (unpub.); *Turner v. Hickman*, 342 F. Supp. 2d 887 (D.Ca 2004); *Catala v. New Hampshire Dept. of Corrections*, 2005 WL 3133036 (D.N.H. 2005) (unpub.); *Gray v. Johnson*, 2005 WL 3036644 (E.D. Va. 2005) (unpub.); *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).

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 (1984)(Stevens J., conc. in part and dissenting in part)(citing, *Cruz*, 405 U.S. at 322 n. 2). Although a prisoner’s free exercise rights may be curtailed by a policy “reasonable related to legitimate penological interests,” *Turner v. Safley*, 482 U.S. 78, 89 (1987), there can be no argument that denying Hanas his Bible and rosary and barring him from seeing his Priest served any penological interest whatsoever.¹⁷

3. Hanas’ Right To Effective Assistance of Counsel Was Clearly Established.

In 1977 the Supreme Court said that the rights granted by the Sixth and Fourteenth Amendments “means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceeding have been initiated against him, whether by formal charge, preliminary hearing, indictment, information, or arraignment.” *Brewer v. Williams*, 430 U.S. 387, 398 (1977)(internal quotation and citation omitted); *see generally*, *Powell v. Alabama*, 287 U.S. 45 (1932)(right to counsel in state capital proceedings); *Gideon v. Wainwright*, 372 U.S. 335 (1963)(right to counsel for serious crimes); *Argersinger v. Hamlin*, 407 U.S. 25 (1972)(right to counsel in misdemeanor proceedings leading to imprisonment). A post-conviction right to counsel also was well-established in 2003. *See, e.g.*, *Townsend v. Burke*, 334 U.S. 736 (1948)(right to counsel in sentencing proceedings); *Douglas v. California*, 372 U.S. 353 (1963)(appeals as of right); *Mempa v. Rhay*, 389 U.S. 128 (1967) (some probation and parole proceedings); *U.S. v. Tucker*, 404 U.S. 443

¹⁷ ICCO’s practice of favoring one set of religious beliefs and practices and disfavoring Catholicism and other religions clearly violated Equal Protection. 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*, 405 U.S. at 1080-1081.

(1972)(sentencing proceedings). Prisoners specifically enjoy a constitutional right to counsel. *E.g.*, *Procunier v. Martinez*, 416 U.S. 396 (1974) (right to meet with counsel, including law student counsel)(overruled on other grounds by *Thornburgh v. Abbott*, 490 U.S. 401 (1989)).

4. There is Sufficient Evidence That Amy Violated Hanas' Constitutional Rights.

Amy unquestionably was aware that Hanas' constitutional rights were in jeopardy. She was inundated by telephone calls, letters and visits from Hanas, his family, his attorney and others regarding the conditions at ICCO. (Amy 111, 122, 146, 158-159) Amy had a law degree and studied constitutional law in law school. (Amy 13-14) She informed her supervisor that there might be a constitutional issue concerning Hanas. (Amy 163-164) Yet, she appears to have relied solely on Rottiers' flat denials and his assurances that ICCO was not Pentecostal and that it was not a cult. (Amy 111-112) Amy utterly failed to act on information indicating that plaintiff's rights were being violated. For example, on January 26, 2003, after meeting with a distraught Chris Hanas, Amy talked to an official from the Hanas' Church about an arrangement for a Priest to deliver the Eucharist to Joe Hanas at ICCO (again, clearly acting in a non-judicial capacity). (Amy Exh. 6, p. 1, 1/26/03 entry) Amy also knew not long after, from letters and phone calls from the Hanas family, that Rottiers had squelched the plan. Yet Amy took no further action. By her inaction, Amy both enabled and contributed to the continuing constitutional violation.

In her role as an aid and counselor to her "client," Amy assumed a duty to act on his behalf rather than standing by while the Judge imprisoned Hanas for failing to comply with a coercive and unconstitutional program. Amy's duty to act was clearly established. *See, e.g.*, *Durham v. Nu`Man*, 97 F.3d 862, 867 (6th Cir. 1997)(qualified immunity was unavailable to a nurse who failed to

intervene or seek help while a patient was being beaten by hospital security officers); *McHenry v. Chadwick*, 896 F.2d 184 (6th Cir. 1990)(a correctional officer who observes an unlawful beating may be held liable under § 1983 without actively participating in the beating); *Bruner v. Dunaway*, 684 F.2d 422 (6th Cir. 1982)(same). *cert. denied sub nom., Bates v. Bruner*, 459 U.S. 1171 (1983); *Smith v. Ross*, 482 F.2d 33 (6th Cir.1973)(same).

Qualified immunity also should not shield Amy from the consequences of her attempts to discourage the retention of legal representation for Hanas, and for her complicity in ICCO's clear violation of Hanas' Sixth Amendment rights. When informed by Chris Hanas that she planned to retain an attorney, Amy dismissively suggested that Hanas did not need one, since she herself was a lawyer. (C. Hanas Dec. ¶ 16) Amy denied making this statement. (Amy 138) Once an attorney was retained, Amy was made aware that he had been denied access to his client. (Yiannatji Dec. ¶ 9; Amy 142-144, Exh. 6, 2/17/03 entry) It appears that Amy did nothing to help. In fact, a planned meeting with Joe Hanas' attorney at Amy's office was rescheduled without warning, and later that day Amy met with Hanas without his attorney present. (C. Hanas Dec. 28; Amy Exh. 6, 2/18/03 entry)

Defendant Amy performed several distinct functions, many of which were not of a quasi-judicial character. In her "social worker" role as counselor to her "client," Amy either acted or failed to act in ways that abetted violations of plaintiff's clearly established constitutional rights. For this reason, Amy has not met her burden of showing entitlement to either quasi-judicial absolute immunity or qualified immunity.

C. Summary Judgment Should Not Be Granted To Amy.

There is no merit to Amy's argument 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. Of course, the record only begins with the January 24, 2003, hearing at which Amy made her recommendation to the Judge. Amy's liability also arises from her many actions and failures to act following plaintiff's placement at ICCO.

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 the plaintiff, 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)). 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 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 held (even without factual findings in the trial court) 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). Amy acted in concert with the other defendants and she should not be absolved of liability because of their involvement.

CONCLUSION AND RELIEF SOUGHT

For the above reasons, plaintiff Hanas respectfully requests that Stanette Amy's Motion For Summary Judgment be denied.

Respectfully submitted,

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Dated: August 1, 2007

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Reply with the Clerk of the Court using the ECF system on this 1st 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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