

ACLU of Oklahoma Files Judicial Complaint Against Judge for Unconstitutionally Requiring Defendant to Attend Church

December 4, 2012

FOR IMMEDIATE RELEASE

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OKLAHOMA CITY, OKLAHOMA— The ACLU of Oklahoma filed a complaint Tuesday with the Oklahoma Council on Judicial Complaints against Muskogee County District Judge Mike Norman for requiring a defendant to attend church for ten years as a condition of probation.

The complaint states in part that Judge Norman violated Oklahoma's Code of Judicial Conduct which requires Judges to "uphold and apply the law". With this sentence, Judge Norman disregarded fundamental principles of religious liberty found in the Establishment Clause and the Free Exercise Clause of the First Amendment, as well as guarantees of religious liberty found in the Oklahoma Constitution.

"It is shocking that a judge would so blatantly ignore the First Amendment, which at a minimum prevents the government from forcing church attendance and from interfering in deeply personal matters of faith," said Ryan Kiesel, Executive Director of the ACLU of Oklahoma.

Comments made by Judge Norman since the case first caught the public eye show the Judge may have been aware that he was not following the law when he ordered Tyler Alred, seventeen, to attend church for the next decade on penalty of prison. As Judge Norman stated to one reporter, "I received a couple of bad calls...telling me it was in violation of the U.S. Constitution. They may well be right, but that's what I did..." (*Quotation from: "Church Order Questioned," The Daily Oklahoman*, 18 November 2012).

"Judge Norman's decision to give this defendant a choice between church and prison cannot be enforced without illegal governmental intrusion into a young man's conscience," said Brady

Henderson, Legal Director of the ACLU of Oklahoma. “Not only is this inconsistent with our nation’s fundamental guarantees of freedom of worship, it is also offensive to the very religion it is meant to advance,” continued Henderson. “Acts of worship should come from a freely-made choice to adopt a faith, not from the government giving its citizens an ultimatum to sit either in a pew or a prison cell.”

“This case is a tragic story and our hearts go out to all of the parties involved,” said Kiesel. “As tragic as it is, it does not grant a judge the authority to ignore the founding principles of religious liberty, and we urge the Council will take appropriate action that ensures Judge Norman follows the Constitutions of the United States and Oklahoma, and also that the council’s their decision serves as a disincentive for judges who feel they are not bound by the law.”

A copy of the complaint is attached to this press release.

For more information about the ACLU of Oklahoma, please visit www.acluok.org or by visiting www.facebook.com/acluok.

COMPLAINT

Complaint against: The Honorable Mike Norman, District Judge
Complaint made by: ACLU of Oklahoma
Address: 3000 Paseo Drive
Oklahoma City, OK 73103
Telephone: (405) 524-8511

If your complaint arises out of a court case, please answer these questions:

(A) What is the case name State v. Tyler Alred and number YO-12-2 (Muskegee County)

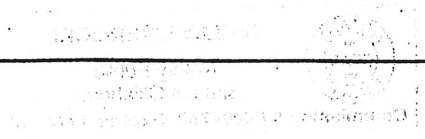
(B) What kind of case is it? (please check one)

<input checked="" type="checkbox"/> Criminal	<input type="checkbox"/> General Civil	<input type="checkbox"/> Domestic Relations
<input type="checkbox"/> Small Claims	<input type="checkbox"/> Juvenile	(divorce, custody,
<input type="checkbox"/> Probate	<input type="checkbox"/> Traffic	support, and related)
<input type="checkbox"/> Other (specify) _____		

(C) What is your relationship to the case?

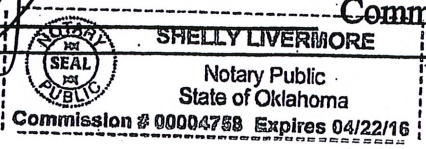
<input type="checkbox"/> Plaintiff/Petitioner	<input type="checkbox"/> Attorney for: _____
<input type="checkbox"/> Defendant/Respondent	<input type="checkbox"/> Witness for: _____
	<input checked="" type="checkbox"/> Other (specify) <u>Legal Advocacy Organization</u>

A brief chronological statement of the facts: See attached statement...



Dated: 12-3-12 _____
Signature

Additional pages may be attached if necessary.

Verification	
State of <u>Oklahoma</u>)	
County of <u>Oklahoma</u>)	SS.
<u>Ryan D. Kiese</u> , of lawful age, being first duly sworn, states:	
I have read the foregoing statement, am familiar with the contents thereof and the statements therein contained are true and correct, to the best of my knowledge and belief.	
(Signature) _____	
Subscribed and sworn to before me this <u>3rd</u> day of <u>December</u> , 20 <u>12</u> .	
(Notary Public) _____	
My commission expires _____	Commission No. _____
<div style="text-align: center;"><p>SEAL NOTARY PUBLIC SHELLY LIVERMORE Notary Public State of Oklahoma Commission # 00004758 Expires 04/22/16</p></div>	

Attachment to the ACLU of Oklahoma's Complaint against Judge Mike Norman

On February 17, 2012, Tyler Alred, a seventeen year old youthful offender, was charged with Manslaughter in the First Degree in the district court of Muskogee County. Alred pled guilty to this charge on August 24, 2012, before Judge Mike Norman, without a plea agreement.

On November 13, 2012, Judge Norman conducted a sentencing hearing following which he deferred Mr. Alred's sentence for a period of ten years under various rules and conditions of probation. In addition to typical requirements such as lawful conduct and being subject to supervision by the local district attorney's office, Judge Norman also ordered Alred to attend church while on his deferred sentence.

As a result of this probationary condition, Mr. Alred is now compelled by court order to attend weekly Christian religious worship on penalty of prison. Should he violate this requirement, he could face being sentenced to life in prison, with the possibility of parole. The statutory minimum length of his sentence would be four years. *See* 21 O.S. §715. While prison is not the only possible punishment for the violation of a deferred sentence, it is of note that in an extrajudicial comment reported in *The New York Times*, Judge Norman specifically said that should Mr. Alred fail to attend church (or otherwise violate the probation), he would be sentenced to prison. *See* "Constitution Experts Denounce Oklahoma Judge's Sentencing of Youth to Church," *The New York Times*, 21 November 2012.

Judge Norman, as a duly-elected judge of an Oklahoma district court, is required to follow the provisions of the Oklahoma Code of Judicial Conduct (hereinafter "the Code". In Mr. Alred's case, Judge Norman failed to comply with two of the Code's provisions.

First, Judge Norman's decision violates Rule 2.2 of the Code, which mandates that "a judge shall uphold and apply the law..." In Mr. Alred's case, Judge Norman issued an order clearly repugnant to the Establishment Clause of the First Amendment to the United States Constitution, as incorporated to the states through the Fourteenth Amendment, as well as Article One, Section Two of the Oklahoma Constitution. Both of these preclude an order that compels participation and support of a specific faith. In Mr. Alred's case, Judge Norman's order clearly and unambiguously grants court approval and preference exclusively to Christian worship, while requiring that such worship be a prerequisite to Mr. Alred's continued freedom and exercise of civil rights.

Conversely, the Judge's order creates a violation of the Free Exercise Clause in the First Amendment, as well the Oklahoma Constitution's guarantee of "perfect toleration of religious sentiment." Okla. Const. Art. I, §2. While it appears at present that church attendance is consistent with Mr. Alred's

professed Christian faith, Judge Norman's order precludes Mr. Alred from acting on any change in his beliefs. Should Mr. Alred be moved to adopt a faith inconsistent with his current church or reject religious faith altogether, he must choose either to exchange his church pew for a prison cell or to participate in compelled religious worship inconsistent with his beliefs. In such a situation, he is denied the benefit of free exercise of his religious faith, in clear contravention of law.

Second, Judge Norman's order violates Rule 2.3 of the Code, which provides that a judge "shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice..." The Rule goes on to specifically proscribe the showing of bias or prejudice based on religion. In Mr. Alred's case, Judge Norman's order shows an obvious bias in favor of the value of Christian religious activities. Conversely, his order of church attendance as part of a rehabilitative probationary program shows a prejudice against secular or non-majority faith activities.

Subsequent to Mr. Alred's sentencing on November 13, Judge Norman has not rescinded the ruling, nor has Mr. Alred asked that he do so. While Mr. Alred's decision not to appeal the ruling must be respected, it is inescapable that with the possibility of prison on the table, he faces a compelled decision rather than a free choice. Such a dilemma is precisely what the framers of both the United States and Oklahoma constitutions sought to avoid when mandating that religious freedom be inviolate as the supreme law of the land. So long as Judge Norman, or any other public official, is allowed to disregard this principle at will, the framers' work is made meaningless.

Such willful disregard is further shown by extrajudicial comments made by Judge Norman concerning the ruling. When questioned by a local reporter, Judge Norman stated, "I received a couple of bad calls...telling me it was in violation of the U.S. Constitution. They may well be right, but that's what I did..." See "Church Order Questioned," *The Daily Oklahoman*, 18 November 2012. Moreover, in further comment reported in *The Washington Post*, Judge Norman confirmed "he didn't believe his sentence would pass a legal challenge — but he doesn't believe either side will seek an appeal." See "Okla. Judge Defends Sentencing Teenager to Church Even if it's Not Legal," *The Washington Post*, 19 November 2012.

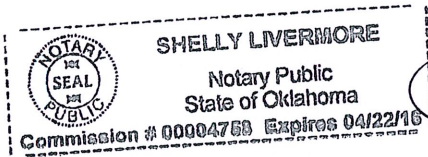
We implore the council to consider all of its disciplinary options, keeping an eye towards a remedy that will discourage Judge Norman from subsequent actions and that sets an example for other jurists that such blatant disregard for the constitutions of Oklahoma and the United States cannot be tolerated and is manifestly inconsistent with the integrity of the judiciary.



Ryan Kiesel, Executive Director, ACLU of Oklahoma

Subscribed and sworn to before me this 3rd day of December
2012. I state under penalty of perjury under the laws of Oklahoma that the
foregoing is true and correct.

Dated December 3, 2012 at Oklahoma City, Oklahoma



Shelly Livermore
Shelly Livermore, Notary Public