UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS, et al.,

Plaintiffs,

vs. Civil Action No. 1:06-cv-01207-JDB

WALTER MCGILL d/b/a
CREATION SEVENTH DAY
ADVENTIST CHURCH, et al.,

Defendant.

DEFENDANT'S OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ON PLAINTIFFS' MOTION FOR SANCTIONS AND PERMANENT INJUNCTIVE RELIEF

The Defendant, Walter McGill ("Pastor McGill"), through counsel, files this Objection to the Magistrate Judge's Report and Recommendation on Plaintiffs' Motion for Sanctions and Permanent Injunctive Relief (D.E. 94). The issue before the Magistrate Judge can be summarized as follows:

> **Pastor McGill is a man of humble resources up against a well-funded machine. The Court granted summary judgment to Plaintiffs on the major issue in this case—the trademark claim—and then ordered the parties to engage in mediation of collateral issues. Pastor McGill's religion does not allow him to compromise on the issues in dispute. Should he face a default judgment for failing to mediate, at great personal expense, something he cannot compromise?**

The Magistrate Judge concluded that the sanction of a default judgment was appropriate

based on the application of a four-factor test that considered: (1) the Defendant's willfulness; (2) the prejudice to the Plaintiffs; (3) prior warning to Defendant; and (4) the availability or use of less severe sanctions.[1]

In most cases, the only thing that stands in the way of settlement is the location of the decimal point. In this case, the gap between the parties is intangible and as wide as the universe is long. Both parties claim the right to use three words: Seventh Day Adventist. Pastor McGill's religion requires him to use these words, and the Court already has granted the Plaintiffs summary judgment on this issue. Although a few ancillary claims remain, practically speaking, the case is over unless he can prevail on appeal.

The Magistrate Judge concluded that Pastor McGill's actions were willful, because he refused to mediate on grounds that his religion does not allow him to compromise his belief that he is required to use particular words to describe his faith. No consideration was given to whether his belief that his religion prevents him from compromising these issues could, or should, be accommodated. Courts have a long history of accommodating religious beliefs, such as allowing Quakers to testify by affirmation rather than oath[2] and permitting religious attire that might otherwise violate court rules.[3] Here, Pastor McGill was ordered to appear at mediation and participate in good faith after informing the Court that he could not compromise his beliefs.[4] In accord with applicable U.S. Supreme Court precedent, the Court should have considered

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[1] See *Regional Refuse Systems v. Inland Reclamation Co.*, 842 F.2d 150, 155 (6th Cir.1988).

[2] *Bd. of Educ. v. Grumet*, 512 U.S. 687, 723 (1994) (Kennedy, J., concurring).

[3] *See State v. Hodges*, 695 S.W.2d 191 (Tenn. 1985) (discussing proper court attire and the balancing test courts are to apply when considering whether societal interests justify incursion by the State into religious activity); *See also*, In Re Palmer, 386 A.2d 1112 (R.I. 1978) (regarding wearing cap in court); McMillan v. State, 265 A.2d 453 (Md. Ct. App. 1970) (same).

[4] D.E. 74, p. 2 (ordering McGill to appear personally and participate in good faith); D.E. 71, p. 1 (discussing reasons for request to remove requirement of mediation).

whether Pastor McGill should have been required to attend the mediation personally and "in good faith participate" when he has stated that there is no room for compromise.[5] It would be impossible for him to participate "in good faith" if his religion dictates that he cannot compromise on the issues in dispute, because mediation is premised on the idea that both parties "give ground" to settle a dispute.

For these reasons, Pastor McGill objects to the Magistrate Judge's conclusion that a default judgment should be entered when an order to "in good faith participate" in the mediation violates his free exercise rights since he cannot participate in good faith, because his religious beliefs prevent him from compromising on the issues in dispute.

In considering the fourth factor and ultimately concluding that default judgment was appropriate, the Magistrate Judge also found that Pastor McGill "will not participate should this matter go to trial."[6] This is incorrect. Pastor McGill moved the Court to amend the pre-trial order to remove the requirement of mediation and have the case proceed to trial.[7] While his attorney stated his opinion to Judge Breen during the Aug. 26, 2008, status conference that he believes Pastor McGill may not return for trial, Pastor McGill has never stated to the Court that he would not appear for trial.

Finally, the Magistrate Judge's report is premised on the Court's rulings that it has subject matter jurisdiction over this case, that judgment on the pleadings was not warranted, that Pastor McGill did not fairly raise the affirmative defense of the Religious Freedom Restoration Act, that he should not be allowed to amend his pleadings, and that summary judgment was

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5 *See Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Sherbert v. Verner*, 374 U.S. 398 (1963).
6 D.E. 94, p. 6.
7 D.E. 71, p. 2.

appropriate on the trademark claim. Unfortunately, because only partial summary judgment was granted, Pastor McGill is in a position of being unable to appeal the above rulings, several of which would do away with the need for mediation, without permission from the Court.

For these reasons, Pastor McGill objects to the Magistrate Judge's Report and Recommendation on Plaintiffs' Motion for Sanctions and Permanent Injunctive Relief and respectfully requests that the Court reject the Magistrate Judge's findings so that he may move for an interlocutory appeal of the Court's rulings on jurisdiction, judgment on the pleadings, whether the RFRA was raised, if the RFRA was not raised, whether he should be allowed to amend, and whether summary judgment was appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charles L. Holliday, hereby certify that on April 30, 2009, I electronically filed the foregoing with the Clerk of the Court for the Western District of Tennessee via the Electronic Filing System with notice to Plaintiffs' attorneys, Emily C. Taube and Joel Galanter, and all parties listed on the Electronic Filing Receipt.

s/ Charles L. Holliday
CHARLES L. HOLLIDAY