

# FREEDOM FROM RELIGION *foundation*

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November 16, 2023

**SENT VIA FAX & U.S. MAIL: (304) 424-1726**

The Honorable Jason Wharton  
Mid-Ohio Valley Adult Drug Court  
Wood County Judicial Building  
2 Government Square, Room 221  
Parkersburg, WV 26101-5353

Re: Unconstitutional religious recovery program

Dear Judge Wharton:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation in the Mid-Ohio Valley Adult Drug Court. FFRF is a national nonprofit organization with more than 40,000 members, including more than 100 members in West Virginia. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

We were contacted by someone who is required to attend your drug court and who reported that the program requires participation in Alcoholics Anonymous/Narcotics Anonymous (AA/NA). Our complainant provided paperwork from the court listing the requirements for each phase of the treatment program. The paperwork clearly indicates that participation in AA/NA is required. For instance, in phases 1 and 2, at least 2 AA/NA meetings are required per week. *See enclosure.* To progress to Phase 3, the participant must have an AA/NA home group and sponsor. *Id.* Our complainant requested an alternative secular recovery treatment: SMART Recovery. Reportedly, this request was denied by Executive Director Hernando Escadon.

As you are likely aware, the central components of twelve step programs, such as AA/NA, are religious in nature. These programs require recognition of a higher power and require participants to turn their lives over to a personified, gendered “God.” While requiring a religious addiction recovery support program as one of multiple options is permissible, the Mid-Ohio Valley Adult Drug Court violates the First Amendment when it requires participation in solely religious programs. The Establishment Clause guarantees that the “government may not coerce anyone to support or participate in religion or its exercise.” *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)).

Most persuasive to a court in West Virginia should be the recent outcome of a case brought by an inmate who was required to participate in a residential substance abuse treatment (RSAT) program to be considered for parole.<sup>1</sup> In the decision granting a preliminary injunction in this

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<sup>1</sup> <https://www.atheists.org/2023/11/atheists-settle-west-virginia-religious-substance-use-treatment-prison/>.

case, the judge considered the question that is at the core of this complaint: whether West Virginia could penalize an inmate for not participating in a religiously-based substance abuse treatment program. *Miller v. Marshall*, 2023 WL 4606962, \*1 (S.D. W.Va.). The judge decided that the inmate was likely to succeed on all of his claims, including RLUIPA, Establishment Clause, Free Exercise, and Free Speech. *Id.* at \*19–20. The judge cited numerous prior cases in other states that found such religious treatment requirements unconstitutional. *Id.* at \*1, citing *Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007); *O’Connor v. State of Cal.*, 855 F. Supp. 303 (C.D. Cal. 1994); *Kerr v. Farrey*, 95 F.3d 472 (7th Cir. 1996); *Griffin v. Coughlin*, 88 N.Y.2d 674 (1996); *Arnold v. Tenn. Bd. of Paroles*, 956 S.W.2d 478 (Tenn. 1997); *Ross v. Keelings*, 2 F. Supp. 2d 810 (E.D. Va. 1998); *Jackson v. Nixon*, 747 F.3d 537 (8th Cir. 2014); *Janny v. Gamez*, 8 F.4th 883 (10th Cir. 2021).

Similar to our complainant, inmate Miller, an atheist, requested secular treatment options that were denied at two facilities. *Id.* at \*3. Mr. Miller’s RSAT program relied on the twelve steps of AA/NA. *Id.* at \*2. The judge ordered the RSAT removed from Mr. Miller’s parole requirements. *Id.* at \*23. Perhaps most damning was the judge’s conclusion that “[h]ad Mr. Miller simply submitted to Defendant’s **coercion** and completed RSAT, he likely would no longer be incarcerated, and WVDCR could continue its **patently impermissible practices** for years to come.” *Id.* at \*22 (emphasis added).

The Mid-Ohio Valley Adult Drug Court cannot deny secular alternatives to religious treatment programs. Attendees cannot be penalized for refusing to participate in religious programming. Doing so is a “patently impermissible practice.” The court must provide accommodation in the form of a secular alternative or remove the requirement for participation. Courts—including West Virginia—have spoken on this specific practice.

The Mid-Ohio Valley Adult Drug Court must respect the constitutional rights of its participants; it cannot require anyone to violate their religious beliefs while trying to recover from substance abuse. Please respond in writing with the steps the court will take to accommodate our complainant’s religious beliefs so that we may inform our complainant.

Sincerely,



Christopher Line  
Staff Attorney  
Freedom From Religion Foundation

CAL:kmh

Enclosure



## MID-OHIO VALLEY ADULT DRUG COURT Phase Requirements

### PHASE 1

- Attend IOP Monday, Wednesday, Friday from 9:00 – 11:00 AM.
- Attend a minimum of two (2) AA/NA meetings per week and turn in meeting sheet at Court on Mondays.
- Daily check-in with Probation Officer / Case Manager by phone no later than 11:00 AM.  
**Dallas (681) 313-6893**
- Every day, including Saturday and Sunday you must call the Drug Testing Phone System at (304) 422-1165 to see if you need to report to the Day Report Center to provide a urine screen. You must be at the DRC and able to provide a sample by 11:45 AM.
- Attend Court **EVERY** Monday at 3:15 PM.
- Curfew is 8:00 PM.
- Submit to announced and unannounced home, field, school, agency, and / or employment visits.
- Attempt to obtain a complete physical and dental examination.
- Have the motivation to change your lifestyle and focus on sobriety.
- To move to Phase 2:
  - Must have a minimum of 60 days in the program.
  - Must have a minimum of 14 consecutive days clean.
  - Must pay \$25.00 towards your Drug Court Participation Fee OR perform 2.5 hours of community service work at an approved location.

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### PHASE 2

- Complete IOP.
- Begin Living in Balance on Tuesday and Thursday from 10:00 – 11:30 AM or Monday and Wednesday 6:00 PM to 7:30 PM.
- Attend a minimum of two (2) AA/NA meetings per week and turn in meeting sheet at Court on Mondays.
- Check-in with Probation Officer / Case Manager by phone no later than 11:00 AM on days that you DO NOT have class.
- Every day, including Saturday and Sunday you must call the Drug Testing Phone System at (304) 422-1165 to see if you need to report to the Day Report Center to provide a urine screen. You must be at the DRC and able to provide a sample by 11:45 AM.
- Attend Court **EVERY** Monday at 3:15 PM.
- Curfew is 9:00 PM.
- Submit to announced and unannounced home, field, school, agency, and / or employment visits.
- Pursue housing, employment, schooling, etc. with approval of the Drug Court Treatment Team.
- To move to Phase 3:
  - Must have an AA/NA home group.
  - Must have a sponsor.
  - Must have a minimum of 90 days in Phase 2.
  - Must have a minimum of 30 consecutive days clean.