

Complaint

Introduction

1. This is a complaint against Judge M. Ashley McKathan based on his unconstitutional and unethical conduct at the February 22, 2008 status conference for *Morning Star Baptist Church v. Snowden*. On said date, sitting Judge M. Ashley McKathan, during regular court session and while acting in his official capacity as an officer of the court, engaged in conduct in violation of Alabama Canons of Judicial Ethics Canon 1, Canon 2, and the Establishment Clause of the United States Constitution.
2. Judge McKathan's improper judicial conduct during the February 22, 2008 status conference of *Morning Star Baptist Church v. Snowden* includes, but is not limited to, leading the parties in the aforementioned case, their attorneys, and approximately 100 members of the plaintiff church in prayer and reading numerous passages from the Bible.

Statement of Facts and Allegations

3. At all times herein relevant, Judge McKathan, in doing the acts or in omitting to act as alleged in this complaint, was acting in his official capacity as Circuit Judge of Covington County sitting by special assignment in Monroe County Circuit Court.
4. On December 28 (dated stamped by the clerk of Conecuh County on December 31, 2007), Circuit Judge M. Ashley McKathan issued a

scheduling/pretrial order for case no. cv-2007-900058, *Morning Star Baptist Church v. Snowden*. The order required members of the plaintiff church, the church's attorney and the defendant to meet with Judge McKathan on February 22, 2008, at 2 pm at the Conecuh County Courthouse for a status conference. The order further stated: "At the conference, the parties shall be prepared to discuss this litigation, and to discuss the appropriateness of mediation or Christian conciliation to attempt to resolve the issues presented." See Exhibit A.

5. On February 22, 2008, the abovementioned parties, their attorneys, and approximately 100 members of the plaintiff church attended the status conference at Monroe County Courthouse. Here is an incomplete list of the names and addresses of all persons present who are not listed above:

James J. Dailey, attorney for the plaintiff
21 N. Florida Street
Mobile, AL 36607

Richard Horne, attorney for the defendant
PO Box 916
Mobile, AL 36601

6. At the aforementioned February 22, 2008 status conference, Judge McKathan stepped up to the bench and asked the parties what result they were seeking in the case. After their response, Judge McKathan asked whether this dispute was causing dissention in the church, and whether membership was starting to decline as a result. Plaintiff's attorney Dailey reported that the case had caused problems in the congregation and that membership was fair, but not as strong as it was.

7. McKathan then descended from the bench and stated that he thought he was talking to Christian people and that he was not afraid to stand up and claim the name of Jesus Christ. He then told everyone in the room to join him in a word of prayer. He requested for everyone in the courtroom to join hands and form a circle all the way around the courtroom.
8. Judge McKathan led the courtroom in a prayer for approximately three minutes, at one point dropping to his knees.
9. After the prayer, Judge McKathan read numerous verses of scripture from the New Testament.
10. Judge McKathan told both parties to try to resolve the matter by bringing all pertinent records to Morning Star Baptist Church the next Sunday, February 24, 2008. Specifically, he told Ms. Snowden that she needed to bring the records to church for the parishioners review because “that’s just the way Christians act.”
11. Judge McKathan stated that at this status conference he was acting as a religious leader, but that if they did not resolve the matter in church, all parties would have to return to court and he would act as a judge. He also stated that he knew a good Christian conciliator that he could refer to the parties.
12. Judge McKathan then asked for a show of hands from the people in the courtroom who would be in church the next Sunday. Judge McKathan then repeated this request.

Claims

13. Complainants re-allege and reincorporate by reference paragraph 1 through 21 of the complaint herein.
14. The conduct by Judge McKathan described above constitutes:
 - a. A violation of Judge McKathan's duty under Canon 1 of the Alabama Canons of Judicial Ethics to uphold the integrity and independence of the judiciary.
 - b. A violation of Judge McKathan's duty under Canon 2 of the Alabama Canons of Judicial Ethics to respect and comply with the law.

Specifically, Judge McKathan conduct as described above constitutes a violation of the Establishment Clause of the United States Constitution. *See North Carolina Civil Liberties Union Legal Foundation v. Constagny*, 947 F.2d 1145 (4th Cir. 1991) (holding that a judge's practice of beginning sessions with a prayer violated the Establishment Clause).
 - c. A violation of Judge McKathan's duty under Canon 2 of the Alabama Canons of Judicial Ethics to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
 - d. A violation of Judge McKathan's duty under Canon 2 of the Alabama Canons of Judicial Ethics to maintain the decorum and temperance befitting his office and to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

- e. A violation of Judge McKathan's duty under Canon 2 of the Alabama Canons of Judicial Ethics to not allow his family, social, political, or other relationships to influence his judicial conduct or judgment.
- f. A violation of the Establishment Clause of the United States Constitution. *See North Carolina Civil Liberties Union Legal Foundation v. Constagny*, 947 F.2d 1145 (4th Cir. 1991) (holding that a judge's practice of beginning sessions with a prayer violated the Establishment Clause).