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Court throws shade on bias claim in 'Sun Worshipping Atheist' case

By Adam J. Glazer

Adam J. Glazer is a partner at Schoenberg, Finkel, Newman & Rosenberg LLC and an adjunct professor at Northwestern University School of Law. A general service firm, Schoenberg, Finkel dates back about 60 years in Chicago. Glazer maintains a broad commercial litigation practice with an emphasis on preventing, and if necessary, litigating business disputes.

Some appellate cases present novel issues or test established doctrines. Others reach the appellate court on thorny procedural or technical questions. And then there's Marshel Copple, whose peculiar case helps explain why appellate courts often issue unpublished decisions.

When he applied as a correctional officer with the California Department of Corrections, Copple knew the CDC expected a "willingness to work day, evening or night shifts, weekends and holidays." Before starting work, Copple executed a CDC document that stated working overtime was essential.

Once hired, Copple began a 12-month probation and was assigned to Ironwood State Prison, which required overtime. Copple quickly concluded he could not follow his "Sun Worshipping Atheism" beliefs while at Ironwood. So two months later, still on probation, he posted the tenets of Sun Worshipping Atheism on a website and Facebook to facilitate their presentation to CDC.

And hallelujah for those tenets.

As defined by Copple, Sun Worshipping Atheism derives from "ordered chaos" and "the sun." Followers do not observe a divine being. Instead, "the demands of nature are like a higher power that must be answered to avoid disease and unhappiness and to be morally responsible."

Sun Worshipping Atheists believe "human needs are evolved, that the mind, body and soul, they're all one thing. They're the body, so taking care of the body is the way to take care of the soul."

Sun Worshipping Atheism's uncomplicated, and frankly unobjectionable, 10 practices are "(1) pray in the sun; (2) take natural fresh air daily; (3) sleep eight hours or more; (4) eat and drink when you need to; (5) exercise frequently; (6) rest each day; (7) have a job; (8) be social frequently; (9) respect the integrity of the independent mind; (10) be skeptical in all things."

Per Copple's opus, as to the purpose of life, "there's not one that is what would be expected for the modern, monotheistic, Christian, secular zeitgeist in America."

As the "atheism" in Sun Worshipping Atheism suggests, there are no churches, rituals, holidays, ceremonies or services. Meditating in the sun may, however, prove "helpful."

For adherents, the "structure is very loose and grass-roots," with no hierarchy. As to those adherents, the only known one is Marshal Copple. He asserts that just as with other religions, Sun Worshipping Atheism represents his "personal philosophy" and "way of life."

The day after posting the Sun Worshipping Atheism doctrine, Copple asked the CDOC for relief from 12-plus-hour shifts as violative of his beliefs. Two weeks after the resulting denial, Copple served the CDOC with an Equal Employment Opportunity Commission discrimination complaint. CDOC's Office of Civil Rights denied the complaint.

Following Copple's third overtime assignment refusal, he was warned that another could result in an adverse employment action, flunking probation or both.

Copple then sought administrative review, alleging the CDOC discriminated against him based on his religious beliefs and failed to accommodate those beliefs. These claims were likewise denied.

Unable to reconcile CDOC's continued overtime requirements with his Sun Worshipping Atheism belief that eight hours of sleep per day were needed, Copple resigned and filed suit in state court.

His complaint asserted claims for unfair labor practices under California's Fair Employment and Housing Act.

Each claim — for religious discrimination and harassment, failure to accommodate his religious practices, retaliation based on his religion and constructive discharge for his religious practices — was premised on construing his Sun Worshipping Atheism as a bona fide religion under the law.

The trial court granted summary judgment to CDOC. Copple appealed pro se in *Copple v. California Department of Corrections and Rehabilitation*, No. G050690 (Cal. App. Mar. 24, 2015).

According to one-member Sun Worshipping Atheism's surprising seriousness, the California appellate court undertook a full-fledged FEHA analysis, adopting the test to "make the sometimes subtle distinction between a religion and a secular belief system" set out in *Friedman v. Southern California Permanente Medical Group*, 102 Cal.App.4th 39 (2002).

Venturing into rarely navigated waters, *Friedman* determined that three significant "objective guidelines" evince actual religions. Courts will first address "fundamental and ultimate questions having to do with deep and imponderable matters." (Some might consider defining religion as just such an imponderable matter.)

The court said a true religion must prove “comprehensive in nature” and comprise “a belief system as opposed to an isolated teaching.” Finally, religions are often “recognized by the presence of certain formal and external signs.”

Sun Worshipping Atheism fell short of all three. In pursuit of a healthy lifestyle, Copple developed it to have a positive impact on the mind, body and soul, which he posits are all in one. It does not address “fundamental and ultimate questions” on “deep and imponderable matters.” Instead, “it reflects a moral and secular, rather than religious, philosophy.”

Similarly, while eating well, sleeping enough and exercising may promote a healthy lifestyle, they do not form a comprehensive beliefs system. And Sun Worshipping Atheism’s lack of formal religious signs is evident by the absence of any hierarchy, rituals, services, holidays or houses of worship.

Finding Sun Worshipping Atheism a personal philosophy and way of life, not a religion, the court affirmed summary judgment. Whether Copple merely devised it to avoid working overtime, the way high school students manufacture doctors’ notes to avoid swim class, went undetermined.

His religion of one’s history and tenets suggest, however, that had the court adjudicated its viability as a basis to avoid working overtime, the CDOC would wind up resting on solid, if not sacred, ground.

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