Is Your Church Breaking Public Accommodations Laws?

To answer this question, churches must be well-versed in federal, state, and local laws.

By Richard R. Hammar

The potential effect of public accommodations laws on churches is detailed in *Hitching Post Weddings v. City of Coeur d'Alene*, 172 F.Supp.3d 1118 (D. Idaho 2016). In this case, a married couple (the “plaintiffs”) are Christians and ordained ministers. In 1989, they purchased a marriage chapel (the “Hitching Post”) in Coeur d'Alene, Idaho, which they operated as a for-profit corporation. In 2014, they executed the “Operating Agreement of Hitching Post Weddings, LLC,” which states, in part:

The Hitching Post is a religious corporation owned solely by ordained ministers of the Christian religion who operate this entity as an extension of their sincerely held religious beliefs and in accordance with their vows taken as Christian ministers. The purpose of the Hitching Post is to help people create, celebrate, and build lifetime, monogamous, one-man-one-woman marriages as defined by the Holy Bible. . . .

The Hitching Post provides wedding and marriage-related services for the purpose of publicly expressing and promoting that marriage is the union of one man and one woman, which is consistent with the owners' sincerely held religious beliefs and with their ministerial vows. Any request for wedding and marriage-related services not within this identified purpose is outside the scope of services offered by the Hitching Post.

The Hitching Post, consistent with its owners' sincerely held religious beliefs, provides wedding and marriage-related services also for the purposes of promoting the social institution of marriage as a fundamental building block of our society and promoting the public understanding of marriage as the union of one man and one woman. By furthering these purposes, the Hitching Post endeavors to instill and promote this biblical understanding of marriage and marriage-related values in the communities where it operates. Achieving these goals is important

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Welcome!
For some time now, I have kept a close eye on court cases related to public accommodations laws that primarily revolve around same-sex marriage and bathroom access according to gender identity. The key legal question for churches is whether or not they are places of public accommodation. If so, they cannot discriminate on the basis of sex or gender. As I have stated elsewhere, the answer to this question will depend on the wording, application, and exemptions in a veritable patchwork quilt of hundreds of local, state, and federal laws forbidding discrimination by places of public accommodation.

The case I analyze in this issue focuses on one such local ordinance in this “veritable patchwork quilt.” The owners of a marriage chapel in Idaho sued their local municipality because they feared reprisal for refusing to marry same-sex couples. Ultimately, the case was dismissed because a city ordinance did not consider the chapel—a religious organization—a place of public accommodation and, therefore, was not governed by local antidiscrimination laws.

This case is instructive for at least two reasons. One, it demonstrates when churches and religious organizations may not face limitations on their activities, due to an explicit exemption provided in a public accommodations law. And second, it reinforces why leaders must know these laws well in case such an exemption doesn’t exist.

Lastly, in Recent Developments: arbitration can serve as a defense against costly lawsuits, the “ministerial exception” may keep courts from resolving church disputes, churches must be aware of exclusions in insurance policies, and more.

Richard R. Hammar, J.D., LL.M., CPA
Senior Editor
to ensure that marriage remains a vital societal institution that uniquely promotes the raising of children by their mother and father.

At the same time, the plaintiffs created new employee and customer policies identifying the Hitching Post as a "religious corporation" with a "religious purpose."

For as long as the plaintiffs have owned the Hitching Post, the business has never allowed its ministers to officiate same-sex weddings or commitment ceremonies because doing so would violate the plaintiffs' religious beliefs. Since 1989, the plaintiffs have refused to perform same-sex wedding ceremonies at least 15 times.

In 2013, the city of Courtenay, British Columbia, passed Ordinance 13-10, which makes it a misdemeanor crime "to deny to or to discriminate against any person because of sexual orientation and/or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement." The Ordinance defines "place of public resort, accommodation, assemblage, or amusement" as follows:

A place of public resort, accommodation, assemblage, or amusement includes, but is not limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembled for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two (2) or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or daycare centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution.

The plaintiffs contended that the Hitching Post was a "public accommodation" under the Ordinance.

The Ordinance also contains certain "exceptions," exempting particular entities from its prohibition on sexual orientation discrimination. One exception pertains to "religious corporations, associations, educational institutions, or societies." The Ordinance does not define what constitutes "religious corporations, associations, educational institutions, or societies."

Meanwhile, on May 13, 2013, a US Magistrate Judge ruled that the marriage laws of the State of Idaho were unconstitutional to the extent that they prohibited same-sex marriage. In Doing so, Justice Kennedy, writing for the majority, concluded:

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure unjustifiably discriminate on the basis of sexual orientation, and are in violation of the Equal Protection Clause.

On June 26, 2015, the United States Supreme Court ruled that the Constitution requires a state to license a marriage between same-sex couples and to recognize a same-sex marriage lawfully licensed and performed out-of-state. Obergefell v. Hodges, 135 S.Ct. 2584 (2015). In doing so, Justice Kennedy, writing for the majority, concluded:

The plaintiffs contended that the Hitching Post was a “public accommodation” under the Ordinance.
even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their claim is that you can't legally force them to do something their religion says is wrong. It is just as though they say, "Our love is here. We feel it deeply. We express it in the rituals we practice. We believe it is sacred."

I believe that given the current facts your clients' lawsuit is premature and not ripe for adjudication. As such, I would ask that you review this letter with your clients and urge them to dismiss their lawsuit before any more time and resources are expended. Please call me if you have any questions.

In a second letter, the city attorney stated:

My office has responded to questions from your clients in the past and told them that, based on the facts presented and their corporate status at the time, they would likely be governed by the anti-discrimination ordinance if a complaint was made against them. Their lawsuit was something of a surprise because we had cordial conversations with them in the past and they have never disclosed that they have recently become a religious corporation. However it now appears that on or about October 6, 2014, they filed the Idaho Secretary of State to change their status to a religious corporation. These are new facts. If they are operating as a legitimate for-profit religious corporation then they are exempt from the ordinance like any other church or religious association. On the other hand, if they are providing services primarily or substantially for profit and they discriminate in providing those services based on sexual orientation then they would likely be in violation of the ordinance.

On October 17, 2014, the plaintiffs filed a lawsuit alleging that (1) the City repeatedly informed them that the Ordinance does not apply to Hitching Post, and (2) they had consensually depended on performing same-sex wedding ceremonies. The City did not enforce anyffd to perform same-sex weddings. The plaintiffs alleged that the City did not enforce anyffid to perform same-sex weddings.

On October 20, 2014, the Courer d'Alene reported that the plaintiffs' attorney, Marc Stiles, counsel, addressing the allegations made in the plaintiffs' lawsuit. The letter states, in relevant part:

I am the city attorney for the City of Courer d'Alene, Idaho. As we discussed today by telephone I have reviewed the 63 page complaint and the attached exhibits filed by your clients in their lawsuit against the City. While I applaud your efforts to protect your clients' interests, it appears from the documents filed in their lawsuit that they are claiming to be operating a "religious corporation." If they are truly operating a for-profit religious corporation they would be specifically exempted from the City's anti-discrimination ordinance.

Based on the fact presented to the city by your clients' pleadings in the above referenced 63 page complaint and analysis of the city's anti-discrimination ordinance... it is my opinion and the city's position that as currently represented, the Ordinance of the city is not subject to prosecution under the Ordinance if a complaint was received by the City.

On March 16, 2015, the plaintiffs filed their First Amended Complaint against the City, alleging in part:

The First Amendment does not allow the government to force regular citizens or religious corporations much less organizations of others to choose between honoring religious convictions and ordination vows or forsaking their religious beliefs and ordination vows and perform same-sex wedding ceremonies. But that is exactly the choice City Ordinance § 9.56.050 requires, and it is still requiring, the plaintiffs to make a choice. The plaintiffs and Hitching Post ask this Court to award them compensatory damages for the days they were closed during the City's threats to enforce Ordinance § 9.56.050 against them, and to enjoin the Ordinance as unconstitutional as applied to them because this application violates the Free Exercise Clause, the Free Speech Clause, the Equal Protection Clause, the Due Process Clause, and Idaho's First Amendment of Religious Protection Act.

On March 30, 2016, the City filed a Motion to Dismiss, arguing that the plaintiffs' First Amended Complaint should be dismissed because they

lacked standing and their claims were not ripe for review. More to the point, the Court agreed that, because the Hitching Post was not a religious corporation, it was exempt from the Ordinance. It was challenging and, because the Ordinance was not challenged nor was the Hitching Post or the plaintiffs, they lacked standing to bring their lawsuit and their claims were not ripe for review.
The Application of Public Accommodations Laws to Churches: A review of the leading cases in chronological order

<table>
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<th>Case</th>
<th>Holding</th>
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<td>Traggis v. St. Barbara’s Greek Orthodox Church, 851 F.2d 584 (2d Cir. 1988)</td>
<td>“The church is not a place of public accommodation.”</td>
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<td>Presbytery of New Jersey v. Florio, 40 F.3d 1454 (3d Cir. 1994)</td>
<td>In a case involving the interpretation of the exemption of religious organizations from the public accommodations discrimination provisions in the Americans with Disabilities Act, the court quoted from the ADA regulations: “Although a religious organization or a religious entity that is controlled by a religious organization has no obligations under the rule, a public accommodation that is not itself a religious organization, but that operates a place of public accommodation in leased space on the property of a religious entity, which is not a place of worship, is subject to the rule’s requirements if it is not under control of a religious organization. When a church rents meeting space, which is not a place of worship, to a local community group or to a private, independent day care center, the ADA applies to the activities of the local community group and day care center if a lease exists and consideration is paid.” 28 C.F.R. Pt. 36, App. B (2007).</td>
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<td>Sloan v. Community Christian School, 2015 WL 10435764 (M.D. Tenn. 2015)</td>
<td>This case addressed the definition of “place of public accommodation” under Title III of the ADA, rather than a state or local public accommodations law. Nevertheless, its discussion of this key term provides some clarification, even if by inference. It suggests that churches that operate “a day care center, a nursing home, a private school, or a diocesan school system,” are places of public accommodations subject to the nondiscrimination provisions of a local or state public accommodations law.</td>
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<td>Barker v. Our Lady of Mount Carmel School, 2016 WL 4573588 (D.N.J. 2016)</td>
<td>“Although churches, seminaries and religious programs are not expressly excluded from the definition of ‘place of public accommodation,’ the legislature clearly did not intend to subject such facilities and activities to the [Public Accommodations] law. Thus, the claims against these institutional defendants fail as a matter of law.”</td>
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<td>Fort Des Moines Church v. Jackson, 2016 WL 6998642 (S.D. Iowa 2016)</td>
<td>A federal district court in Iowa refused to issue an injunction preventing state and local public accommodation laws from being enforced against it, since there was no injury to be redressed. The court referenced an exception in the law for churches, and an affidavit from the state and city defendants that they had never applied the law to churches. But the court cautioned that a church that “engages in non-religious activities which are open to the public” would not be exempt, and it cited as examples “an independent day care or polling place located on the premises of the place of worship.”</td>
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<td>Hitching Post Weddings v. City of Coeur d’Alene, 172 F.Supp.3d 1118 (D. Idaho 2016)</td>
<td>A federal district court in Idaho ruled that the ministers of a “religious corporation” lacked standing to challenge the constitutionality of a municipal public accommodations law that they believed violated their constitutional rights of speech and the free exercise of religion because of their apprehension that they would be punished for refusing to perform same-sex marriages. The court concluded that the religious corporation lacked standing to litigate its claims since its concerns over future punishment for violating the ordinance was not a sufficient injury to satisfy the standing requirement. The court noted that no entity had ever been prosecuted for violating the ordinance, and that the city attorney had informed the church that it would not be prosecuted.</td>
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acmodation" to include churches, so can the church assert a constitutional defense to coverage based on the First Amendment's free exercise or nonestablishment of religion clauses?

These questions are addressed below, in light of the Idaho court's ruling and in light of existing precedent.

**Cover Story**

*Is the church a "place of public accommodation" under applicable local, state, or federal laws?*

The first question to resolve in investigating the application of public accommodations laws to a church is whether churches satisfy the definition of a "place of public accommodation" under the law. There are three possibilities:

- The law excludes churches from the definition of a "place of public accommodation." Churches are expressly excluded from the definition of a "place of public accommodation" but only if certain conditions are met. For example, a church does not rent its property to the public for weddings and other events.
- Churches are included in the definition of a "place of public accommodation" but they do not rent their property to the public. For example, a church does not operate any other commercial activity. To illustrate, several churches challenged a Massachusetts law that was construed as an "attorney general to include "houses of worship" within the definition of a place of public accommodation regardless of rental or other commercial activity. The Attorney General later announced that "while religious facilities may qualify as places of public accommodation if they host a public, secular function, an unqualified reference to "houses of worship" was inappropriate.
- The courts concluded that the definition of a "place of public accommodation" varies from jurisdiction to jurisdiction. Effective ways to address this issue are described below. How- ever [this fact] is not objectively reasonable. All of the statutes, the ordinances, and the interpretation of the provisions appearing in the [state civil rights agency's]

**What forms of discrimination are prohibited by places of public accommodation? (i.e., is gender identity included)?**

The forms of discrimination forbidden by public accommodations laws vary from jurisdiction to jurisdiction. They are often amended, so it is important for church leaders to be familiar with the current text of applicable public accommodations laws.

If a state or local public accommodations law defines a "place of public accommodation" to include churches, or is so construed by a court or administrative agency, can the church assert a constitutional defense to coverage based on the First Amendment's free exercise or nonestablishment of religion clauses?

As noted in a table in this article, several courts and administrative agencies have said that there are constitutional limits on the authority of government agencies to enforce the nondiscrimination provisions of public accommodations laws against churches. To illustrate, a federal district court in New Jersey ruled that a church's refusal to allow a group with a "gay pride" theme to use its facilities to hold a gay pride march was not a violation of the church's religious freedom under the First Amendment. In contrast, a New York state appeals court held that a church's denial of use to a group was a violation of the New York Human Rights Law. The court said that the church's refusal to allow a gay pride march on its property violated the church's First Amendment rights.

Plaintiff alleges that it fears prosecution under the state and municipal discrimination laws if it turns away groups that are not in accord with its beliefs. However, the Supreme Court has held that religious organizations are entitled to a "reasonable accommodation" in order to further their religious activities. The Court has also held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has further held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has also held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has further held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has even held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has also held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has further held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has even held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has also held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has further held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has even held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has also held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities. The Court has further held that religious organizations are entitled to the same "reasonable accommodation" as secular organizations in order to further their religious activities.

The law directs the Massachusetts Commission Against Discrimination (MCAD) to determine whether claims of discrimination under the Massachusetts Civil Rights Act (MCRA) or state or federal civil rights laws or other laws or regulations or guidance facilitating the implementation of the new law. The MCRA, titled "Gender Identity Guidance," which states that "a church could be seen as a place of public accommodation if it holds a position that a spousal partner, that is open to the public."

The attorney general also issued its "Gender Identity Guidance for Public Accommodation" and stated on its website that "places of worship are places of public accommodation. The attorney general later clarified its position as a result of a lawsuit brought by four churches, and concluded that "while religious facilities may qualify as places of public accommodation if they host a public, secular function, an unqualified reference to "houses of worship" was inappropriate.

Second, it is likely that a church that invokes the public accommodation responsibilities to worship or other activities in furtherance of the church's religious purposes will be deemed a place of public accommodation, especially if the primary purpose in doing so is raising revenue.

**In Depth**

For more help understanding how public accommodations laws might affect churches, see these articles in Church Law & Tax Report: "Church, Gender Identity, and Bathroom Access" (March/April 2017) and "The Supreme Court's Same-Sex Marriage Ruling" (September/October 2015). These two articles and the feature article in this issue will be collected into a downloadable PDF. It will be available on ChurchLawAndTax.com. For other key legal issues related to church property, see Chapter 7 in "Pastor, Church Law & Law—available in the Library section of ChurchLawAndTax.com."
Recent Developments
Issues that Affect Ministers and Churches.

Because of their favored status, arbitration agreements "should be read liberally to find arbitrability if reasonably possible. . . . In fact, it is a valid and enforceable agreement to arbitrate disputes and the particular dispute between the parties falls within the scope of the agreement, the agreement must be enforced." 

The court noted that "nonprofit corporate associations are given the utmost latitude in their regulation and management of internal disputes. A voluntary association may, without direction or interference by the courts, draw up its own rules and regulations, and bylaws which will be controlling as to all questions of doctrine or internal policy." The court continued:

A nonprofit organization's private law generally applies to disputes among those who wish to remain members. Typically, a court will not intervene in the affairs of a nonprofit unless the complaining parties have suffered an invasion of their civil rights, or of or property. Only the most abusive and obnoxious bylaw provision could properly invite a court's intrusion into what is essentially a . . . thicket. Ordinarily, the contracting parties, not courts, must weigh and evaluate the wisdom of their corporate agreements and regulations. Having voluntarily submitted to the rule of the corporate majority, all members are thereby bound and are barred from challenging any rule, despite the corporate rule or action complained of, unless the court determines that the rule violates the contract, the state law or a public policy of that state.

In the present case, the plaintiffs claimed that the arbitration provision was not contained in a contract but merely in the mosque's bylaws, to which they, as nonmembers, were not parties and thus not bound. However, the court noted, "as a matter of law based on its reading of the bylaws, the plaintiff asserted that he had become a part of the contract entered into by a member who joins the association . . . Thus the plaintiff was not required to enter into a contract between it and plaintiffs."

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The court noted that "nonprofit corporate associations are given the utmost latitude in their regulation and management of internal disputes. A voluntary association may, without direction or interference by the courts, draw up its own rules and regulations, and bylaws which will be controlling as to all questions of doctrine or internal policy." The court continued:

The board shall create an Islamic Arbitration Committee of 3-5 members in case of disagreement among board members or general assembly members of matters related to the center, such committee shall consist of a Lawyer, an Imam, and Community Leaders. All disputes arising hereunder shall be resolved by arbitration by the aforementioned committee pursuant to policies and procedures established by such committee from time-to-time. All parties involved shall approve of the members of the Arbitration Committee. Decisions of the committee shall be binding on all parties and may be entered in a court of competent jurisdiction.

The trial court declined to dismiss the plaintiffs' complaint, finding the allegations to be "egregious claims in a court. They deal with misuse of a corporate fund. They address those types of concerns that are standard in a corporation type dispute with regard to the conduct of the board. And those are things that clearly belong in a court to be adjudicated."

The defendants appealed, claiming that the arbitration agreement was an invalid corporate contract. The court held that the agreement was enforceable. The court noted, "as a matter of law based on its reading of the bylaws, the plaintiff asserted that he had become a part of the contract entered into by a member who joins the association . . . Thus the plaintiff was not required to enter into a contract between it and plaintiffs."

The court ordered the plaintiffs' claims to be resolved by arbitration.

What This Means For Churches:
This case is important because it illustrates that arbitration is a potent means of resolving internal church disputes without having to go to the civil courts. It is imperative that any arbitration provision be drafted by an attorney, since several courts have refused to enforce arbitration provisions in the governing documents of churches and religious denominations on the basis of technical defects not understood by the layperson who drafted the provision. An attorney is also able to advise church leaders of the advantages and potential pitfalls of the form of dispute resolution. Mahen, et al. v. Sehwaal, et al., 2006 WI 13660 (N.J. App. 2006).

CLERGY-DISCIPLE AND DISMISSAL

Key point 2-041. Most courts have concluded that they are barred by the First Amendment guarantees of religious freedom and nonestablishment of religion from resolving theological questions by dismissed clergy to the legal validity of their dismissals.

A Maryland court ruled that it was barred by the "ministerial exception" from resolving a wrongful termination lawsuit that a dismissed minister filed against his former church. A pastor (the "plaintiff") was hired as pastor of a Methodist church in 2009. His pastoral position was subject to a yearly employment contract, which was renewed in 2010, 2011, and 2012. At the end of 2012, the plaintiff's employment was terminated by the regional conference of the Methodist Church because it had "lost faith" in his spiritual leadership.

The plaintiff thereafter sued his church and Conference alleging wrongful termination based on his race and national origin. The district court ruled that because the church had discretion over which clergymen to employ, it was not entitled to partial summary judgment on the plaintiff's claims.

The plaintiff alleged that he was being terminated based on his national origin and race. Both the district and the appellate court held that the church had discretion over which clergymen to employ, and thus the ministerial exception did not apply.

The case was ultimately resolved when the church paid the plaintiff $50,000, which included lost wages, medical expenses, and attorney's fees. The church also agreed to refrain from interfering with the plaintiff's future employment opportunities.

The ministerial exception is a legal doctrine that bars courts from interfering with the internal affairs of religious organizations, particularly with respect to the selection and dismissal of clergy. The exception is grounded in the First Amendment's Establishment Clause, which prohibits the government from establishing a state religion. The appellate court ruled that the ministerial exception applied in this case because the plaintiff's job was essentially a religious one, and the church had the right to terminate him for theological reasons.

The ministerial exception has been the subject of much debate and litigation in recent years. Some courts have held that the doctrine applies only to religious organizations, while others have extended it to secular organizations that rely on clergy. The appellate court in this case held that the ministerial exception applied to the plaintiff's case because the church had the right to terminate him for theological reasons.

This case is significant because it illustrates the extent to which the ministerial exception has been used by religious organizations to insulate their internal affairs from judicial scrutiny. The case also underscores the importance of legal representation in these types of disputes, as the plaintiff was ultimately compensated through settlement.

7/8/2017

Church Law & Tax Report

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The church and Conference (the "church defendants") argued that the trial judge correctly applied the ministerial exception and thus the court erred in dismissing the case. Quoting the United States Supreme Court's decision in <em>Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC</em>, 132 S.Ct. 694 (2012), the church defendants asserted that the First Amendment’s guarantee of religious freedom "preserves the government from interfering with the freedom of religious groups to select their own ministerial leaders." This principle is known as the "ministerial exception." The church defendants acknowledged that the high court's holding in <em>Hosanna-Tabor</em> was limited to precluding ministers from bringing claims of employment discrimination against their religious employers. However, they pointed out that other courts have extended the ministerial exception to also preclude claims of wrongful discharge like the plaintiff's. The church defendants cited cases from numerous other jurisdictions, both state and federal, that have applied the ministerial exception to wrongful discharge claims. In sum, the church defendants argued that the plaintiff's claims would be foreclosed by the court to engage in an impermissible inquiry into the church's doctrine and self-governance by effect deciding whether or not the plaintiff was actually terminated for the stated reason that the church had "lost faith" in his spiritual leadership.

The church defendants further claimed that the trial judge had been correct in not permitting "pre-discovery dismissal." They contended that the lawsuit was sufficient on its face to demonstrate that the claims were precluded by the ministerial exception.

**Application of the ministerial exception**

The appeals court began its opinion by noting:

Two elements must be present for the ministerial exception to preclude a secular claim - the church's ministerial status and the church's ministerial function. The church's ministerial status means that the church has the power and authority to determine that the claim is unrelated to the church's doctrine and internal self-governance. The church's ministerial function means that the church's decision to grant the claim is motivated by religious reasons.

The court concluded that the plaintiff met the first element, and, with regard to the second element, "it is also clear that the church defendants are the sort of 'religious employers' to which the ministerial exception applies. Therefore, we shall hold that the circuit court did not err in granting the church defendants' motion to dismiss."

What This Means For Churches: This case is important for two reasons:

First, it illustrates the view of most courts that the ministerial exception bars the civil courts not only from resolving employment discrimination claims involving clergy and religious employees, but also from resolving claims involving allegations of discrimination.

Second, the court rejected the plaintiff's argument that "pre-discovery" motions are improper and that the courts always should allow clergy to pursue evidence by means of depositions, interrogatories, and other discovery techniques before ruling on a motion to dismiss. The court concluded that if the application of the ministerial exception is obvious from the face of a civil lawsuit, then a pre-discovery motion to dismiss is appropriate. This is an important point, since it means that employment disputes between churches and clergy may be dismissed soon after a lawsuit is filed without the need for discovery or a full-time-consuming discovery, 2016 WL 1065884 (Md. App. 2016).

Key point 2.04.2: Some courts are wrong when they say that a ministerial termination of clergy if they can do so without any inquiry into religious doctrine.

A North Carolina court ruled that it was not barred by the "ministerial exception" and "ecclesiastical abstention doctrine" from granting a motion to dismiss the case from a pastor that his church had failed to pay him the salary and benefits to which they agreed. The church argued that his employment was by a church in 1975 on a part-time basis. In order to be eligible for retirement at his secular employer, the plaintiff was required to continue to work for the church. However, in 2001, the plaintiff resigned his secular job and entered into a contract with the church for "Full Time Pastorate." This contract consisted of several provisions, including the following:

The pastor shall serve the church for an indefinite period since there is no scriptural support of tenure.

If the pastor should become disabled to the point he can no longer serve, he shall be paid his full salary until the disability insurance begins to be paid (which is provided by the church) and continue to function as the church's responsibility to Pastor.

Whereas, at any time the church shall become dissatisfied with the services of Pastor and ask for his resignation, the congregation at that time, shall be paid his full salary and be governed by the majority of voting members eligible (members in good standing with church). At that time the church shall pay the Pastor the total package in advance or his services shall be deemed as void and the church shall meet this requirement.

The plaintiff claimed that he was guaranteed under the contract "salary continuation upon his disability" and "salary, housing, utilities, social security, and medical insurance through 2013" in consideration of resigning from his secular job and losing his retirement and other benefits to which he was entitled had he continued his employment.

After 10 years of serving as head pastor of the church, the plaintiff contracted kidney disease, was hospitalized, and underwent surgery. As a result, he was no longer able to serve as the pastor of the church. In addition, because the long-term disability insurance was not applicable to the employment agreement, the plaintiff was not eligible for retirement. The plaintiff claimed that he was not being paid all of his salary and benefits.

The plaintiff sued the church and a board of deacons (the "church defendants") in 2007, and the defendants moved to dismiss the case, asking the court to dismiss the case on the ground that it lacked jurisdiction to resolve an internal church dispute. The trial court agreed with the defendants and dismissed the case. The plaintiff appealed.

The trial court held that the plaintiff's allegations that the church contract provisions that he was "fully compensated" as defined in the Wage and Hour Act, and with his allegations of state law claims that the church defendants wrongfully failed to pay that salary, "sufficed to raise a claim under the Federal Caroline Wage and Hour Act." The trial court noted that "once the employees earned the wages and benefits under [the Act] the employer may not rescind them."

The ministerial exception doctrine

The defendants' main argument in support of the ministerial exception was that the plaintiff's lawsuit was barred by the "ministerial exception" and "ecclesiastical abstention doctrine" from resolving internal church disputes. The court noted that the defendants, in citing the ministerial exception and ecclesiastical abstention doctrine, "address almost exclusively the doctrine's applicability to wrongful discharge claims and do not consider the plaintiff's lawsuit was not challenging the termination of his employment, but "the non-payment of contractually agreed compensation and benefits." Therefore, the court concluded, neither doctrine applied to the plaintiff's claims.

In affirmatively recognizing the ministerial exception, a unanimous United States Supreme Court observed in a 2012 case:

[The courts have uniformly recognized the existence of a "ministerial exception," grounded in the First Amendment's application of "employment discrimination" to regulations concerning the employment relationship between the parties and its impact on their freedom to associate. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments.]

The wage and hour law

The plaintiff also alleged a claim under the state Wage and Hour Act, which provides: "Every employer shall pay every employee all wages and tips accruing to the employee on the regular pay day. Pay periods may be weekly, bi-weekly, semi-monthly, or monthly." Further, "an employer who violates the Act shall be liable to the employee . . . in the amount of their unpaid compensation."

The court noted that the plaintiff's allegations that the contractually guaranteed "salary" constituted wages as defined in the Wage and Hour Act, and with his allegations of state law claims that the church defendants wrongfully failed to pay that salary, "sufficed to raise a claim under the Federal Caroline Wage and Hour Act." The trial court noted that "once the employees earned the wages and benefits under [the Act] the employer may not rescind them."

The ministerial exception doctrine

The defendants' main argument in support of the ministerial exception was that the plaintiff's lawsuit was barred by the "ministerial exception" and "ecclesiastical abstention doctrine" from resolving internal church disputes. The court noted that the defendants, in citing the ministerial exception and ecclesiastical abstention doctrine, "address almost exclusively the doctrine's applicability to wrongful discharge claims and do not consider the plaintiff's lawsuit was not challenging the termination of his employment, but "the non-payment of contractually agreed compensation and benefits." Therefore, the court concluded, neither doctrine applied to the plaintiff's claims.

In affirmatively recognizing the ministerial exception, a unanimous United States Supreme Court observed in a 2012 case:

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But the court retorted that “defendants cite no authority and provide no argument why the ministerial exception articulated in Hosanna-Tabor should apply to claims based on nonpayment of wages or refusal to hire.” The court quoted with approval from a 2014 ruling by the Kentucky Supreme Court:

Contractual transactions, and the resulting obligations, are assumed voluntarily. Underneath everything, churches are organizations. And, like any other organization, a church is always free to conduct its affairs voluntarily through contracts, and such contracts are fully enforceable in civil court.

The court explained that federal courts, “is a jurisdictional bar to courts adjudicating ecclesiastical matters of a church.” The courts “have no jurisdiction over and no concern with purely ecclesiastical questions and controversies.” The Supreme Court has interpreted (the First Amendment’s] prohibition of any establishment of religion] to mean that the civil courts cannot decide disputes involving religion organizations where the religious organizations be deprived of interpreting and determining their own laws and doctrine.

However, the court again noted that while courts can under no circumstances refer ecclesiastical disputes, they “do have jurisdiction, as to civil, contract, and property rights which are involved in, or arise from, a church controversy.” It continued:

The question of liability for the salary of a minister or pastor is governed by the principles which prevail in the law of contracts, and it is generally held that a valid contract for the payment of such a salary will be enforceable. . . . However, the controversy must be resolved pursuant to neutral principles of law.

Accordingly, because the court can decide plaintiff’s contract-based claims applying “neutral principles of law,” without entangling the court in an ecclesiastical dispute and interpretation, we hold that the ecclesiastical abstention doctrine does not require dismissal of plaintiff’s complaint. We, therefore, hold plaintiff’s sufficiently stated claims for relief and, therefore, reverse the trial court’s order dismissing plaintiff’s claim.

What This Means For Churches:

The court concluded that while the ministerial exception bars discrimination claims by current or dismissed ministers, it does not bar breach-of-contract claims. In the case, the court concluded that the defendant’s performance of services without recourse to church doctrine. While some other courts have disagreed with this conclusion, there is sufficient support for it that it is impermissible for church leaders to obtain legal redress of the various agreements and contracts and other contractual documents to ensure that they will not give rise to breach-of-contract claims that the civil courts may be able to adjudicate. Therefore, diligent efforts to reduce risk, this risk can be significantly reduced, if not eliminated. Bigelow v. Baptist Church, 786 S.E.2d 359 (N.C. App. 2016).

Key point 4-06. Clergy who sign legal documents in their own name with no indication that they are signing in a representative capacity on behalf of their church may be personally liable on the document.

Key point 6-07.02. Church board members may be personally liable for contracts they sign if they do so without authorization, or if they fail to indicate that they are signing as a representative of the church.

Key point 6-08. State and federal laws provide limited immunity to uncompensated officers and directors of churches and other charities. This means that they cannot be personally liable for their ordinary negligence. However, such laws can provide some immunity from civil 

(1) The defendants were not parties to the contract.

A federal district court in Pennsylvania disallowed a lawsuit because the individual members of a board of deacons claiming that his termination constituted a breach of contract, had hired a pastor (the “plaintiff”) in 2012. The church and plaintiff executed a contract specifying a 20-year term of employment. The contract stated various terms and conditions governing the termination of the plaintiff’s employment. In the event of termination, excluding that either party could terminate the agreement with or without cause but with certain contractual remedies. The contract further provides that “the rights of termination set forth in this contract are in addition to any other rights of termination available to either party by law.” The plaintiff claimed that termination of his employment as pastor was without cause as defined in the contract, and on this basis sued the church and each member of the board of directors (the “defendants”) for breach of employment contract in a federal district court. He sought $2.6 million in damages.

The defendants asked the court for a “judgment on the pleadings,” meaning that the legal basis of the case is patently insufficient, that the court should rule based solely on the pleadings. The court addressed each of the plaintiff’s claims in evaluating the defendants motion.

Deacons’ personal liability

The board of deacons were named individually and personally as defendants in the plaintiff’s complaint. The court then dismissed the case on the following grounds:

(1) They could not be sued for breach of contract to which they were not parties. (2) They did not have authority to hire the defendant pastor or fire church employees, and therefore, they could not be held liable for actions for which they had no authority; and (3) as volunteers in a nonprofit organization they were “immune” from liability in any event, as such liability is unenforceable under Pennsylvania law as uncompensated charitable volunteers.

(3) The deacons were not parties to the contract.

The court agreed that the existence of a contract between the pastor and the individual deacons was required under Pennsylvania law for the pastor to pursue his breach-of-contract claim against them:

It is axiomatic that only a party to a contract may sue for breach. . . . Moreover, as a general rule, a corporation enters into a contract, the corporation alone is liable. Whenever a corporation makes a contract, the corporation alone is responsible for the obligations of the legal entity—of the artificial being created by the charter—and not the contract of the individual members. Liability of the corporate officer for breach of contract only extends where, as opposed to here, the officer makes the promise in his individual capacity.

Notably, only one of the deacons was a signatory to the contract, having signed as stated theretoe as Chairman of the Deacon Board. Regardless, the contract is not rendered [clearly] indicates that it is an agreement between the pastor and church as the contracting parties. . . . Nowhere in the document does the language reasonably suggest that [as individual deacons were] assuming personal liability for the contract.

(2) Board of deacons lack of authority to hire and fire employees.

The individual deacons argued that they did not have authority as deacons to hire or fire employees, and therefore, cannot be held liable for actions for which they had no authority to act. The court rejected this argument under that the church bylaws, the church, by a two-thirds vote of the congregation, could remove a pastor from his tenure.

The plaintiff insisted that the bylaws make the board of deacons responsible for providing input regarding church administrative matters.

The court concluded that both parties argue these matters for naught. These arguments do not have any relevance to the individual defendants’ liability for breach of contract. That the contract was entered into under the structure of the church and certain procedures was to be followed regarding terminating the pastor does not establish any liability of the individual defendants for breach of contract between the pastor and the church.

(3) Charitable immunity for nonprofit volunteers

The individual deacons argued that even if they could be sued for the pastor’s termination, they are immune from liability under the state nonprofit corporation statute, which provides:

(4) General rule. Except as provided otherwise in this section, continued on page 17
no person who serves without compensation, other than reimbursement for actual expenses, as an officer, director or trustee of any nonprofit organization under section 501(c)(3) of the Internal Revenue Code...shall be liable for any civil damages as a result of any acts or omissions relating solely to the performance of his duties as an officer, director or trustee, unless the conduct of the person falls substantially below the standards generally practiced and accepted in like circumstances by similar persons performing the same or similar duties, and unless it is shown that the person did an act or omitted doing an act which the person was under a recognized duty to another to do, knowing or having reason to know that the act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of the person fell below ordinary standards of care.

The court noted that this provision only applies to liability for “acts” (i.e., personal injuries) and not to breach-of-contract claims like the one presented in this case.

The court’s conclusion
The court agreed with the position of the deacons, and dismissed the plaintiff’s claims against them.

What This Means For Churches:
This case is relevant to church leaders for these reasons:

1. Liability for breach of contract. The court concluded that church board members are not personally liable for breach of contract, since “whenever a corporation makes a contract, it is the contract of the legal entity...and not the contract of the individual members.” Liability of the corporate officer for breach of contract only extends where, as opposed to here, the officer makes the promise in his individual capacity.” Even the fact that the chairman of the deacon board signed the contract did not make him personally liable if the contract “clearly indicates that it is an agreement between the pastor and church as the contracting parties.” The court stressed that “nowhere in the document does the language reasonably suggest that (individual deacons were) assuming personal liability for the contract.”

Church board members may be personally liable on contracts that they sign in two ways. First, they may be liable on a contract they sign without authority to do so. Second, board members may be personally liable on contracts they are authorized to sign but which they sign in their own name without any reference to the church or to their representative capacity. To prevent this inadvertent assumption of liability, board members who are authorized to sign contracts (as well as any other legal document) should be careful to indicate the church’s name on the document and clearly indicate that they are signing in a representative capacity (i.e., agent, director, trustee, or officer).

To summarize, clergy and church board members should refrain from signing contracts until they are certain that (1) the contract has been properly authorized, (2) they are authorized to sign on behalf of the church, (3) the church is clearly identified in the contract as the party to the agreement, and (4) the minister signs in a “representative capacity” (for example, as “authorized agent” or “president”).

2. Charitable immunity. Most states have enacted statutes providing charitable immunity of officers and directors of nonprofit corporations. In many states, these “charity laws” provide special protection to church volunteers. Most of these laws only immunize uncompensated directors and officers (i.e., volunteers) from legal liability for their ordinary negligence committed within the scope of their duties. These statutes generally provide no protection for “willful and wanton” conduct or “gross negligence.”

Many courts have agreed with this court, and have limited state charitable immunity laws to personal injuries, and not breach-of-contract claims. Lee v. Sixth Mount Zion Church, 2016 WI 2344529 (W.D. Pa. 2016).

FOOD DISTRIBUTION PROGRAMS

Key point: It is illegal for food stamp recipients to obtain food from churches and other charities and then sell their food stamps to raise money for themselves. Churches that operate a food distribution program should be alert to this risk and seek guidance from state and federal welfare agencies, and other charities, on steps that can be taken to mitigate it.

OH An Ohio court overturned a trial court’s order ban

O

ning an adult male who committed food stamp fraud from visiting food pantries. An adult male (the defendant) engaged in a scheme to use food stamps to buy groceries for others in exchange for cash payments. His scheme was uncovered, and a grand jury returned an indictment that charged him with 11 counts of the illegal use of food stamps in violation of state law. The defendant pleaded guilty to four counts in exchange for the dismissal of the remaining counts. The trial court accepted appellant’s pleas and scheduled the matter for sentencing.

At the sentencing hearing, the trial court imposed the following punishment and sanctions: (1) restitution of $1,711.50; (2) community service; (3) 180-day jail sentence; (4) permanent “disability” for food stamps; and (5) an order that the defendant “not enter food pantries for assistance.” The defendant appealed, claiming that the trial court erred by ordering that he be banned from entering food pantries in the future. This Court did not challenge the other punishments.

A state appeals court ruled that the ban on visiting food pantries could be overturned only if it was unreasonable, arbitrary, or unconscionable, and
it "reluctantly" concluded that this test was met. It began its opinion by noting:

At the outset we wish to point out that the trial court's ruling about the events of this case. When asked at [a hearing before the trial court] to decide whether it was so that they had responded that he did not sell any of his foodstuffs and, in any event, visited food pantry opera it and, at another hearing before the trial court, the defendant was asked: "And the food pantry folks kept asking you if you didn't keep any other thing on their shelves, because people that were eating food were eating food, and then taking all the food from them, and that the truly needy people couldn't get to the pantry." Was the little food that was taken being taken because of people abusing food stamps?"

The appeals court found the trial court's comments were "remarking restrained in light of the fact that to the defendant's behavior deprived many others of local, charitable nutrition assistance." However, it appears the appeals court concluded that the trial court's order to bar the defendant's future entry to food pantries was unreasonable. The appeals court pointed out, however, that local charities may choose to exercise control over their premises, and that the defendant has not been unreasonably denied access. In his view, the appeals court found that the defendant was being denied access because of people abusing food stamps.

The offense for which the defendant was convicted did not directly involve the local food pantry. The state cited no authority as precedent for the defendant's violation. The appeals court noted that the defendant's behavior deprived many others of local, charitable nutrition assistance. However, it appears the appeals court concluded that the trial court's order to bar the defendant's future entry to food pantries was unreasonable. The appeals court pointed out, however, that local charities may choose to exercise control over their premises, and that the defendant has not been unreasonably denied access. In his view, the appeals court found that the defendant was being denied access because of people abusing food stamps.

What This Means For Churches:

Nearly 50 million Americans rely on food stamps (Supplemental Nutrition Assistance Program, or SNAP) to help pay for food. And, many churches operate food distribution ministries. Are there steps that churches can take to ensure that beneficiaries are not obtaining food and then selling their food stamps to raise money for themselves? Such unpleas-

ant and illegal, but they can and do occur. For recommenda-
tions on reducing the risk of fraud, churches that operate food pantries should consult with other churches in the community with similar programs, along with state and federal welfare agencies that oversee the food stamps program, State Res,

3, 597 N.E.537 (Ohio 2016).

INSURANCE

Key point 10-16.A. A liability insur-
ance policy provides a church with a legal defense to lawsuits claiming that the church is responsible for an injury, and it will pay any adverse settlement or judgment up to the limit specified in the policy. Liability insurance policies can also provide defense for punitive damages. A church has an obligation to promptly notify its insurer of any potential claim, and to cooperate with the insurer in its investigation of claims.

The Ohio Supreme Court ruled that an exclusion in a church's insurance policy for criminal or intentional acts precluded coverage only for the person committing the wrongful act, but also for the church, even though it was sued for negligence. In May 2006, married couple (the "plaintiffs") dropped off their 2-year-old son at a church-operated (or "preschool"). When the plaintiffs picked up their son that afternoon they noticed bright red marc and abrasions on the boy's rear end, back, and upper thigh areas. The child complained of pain and stated that a teacher had beaten him with a knife. The plaintiffs contacted the church to report the injuries and to request disciplinary action against the teacher. The church responded by send-

ing them a letter, through its headmaster,
informing them not to bring their son back to the preschool under threat of trespass charges.

The plaintiffs sued the church and pre-
school, asserting claims of assault and battery against the teacher, and claims of negligent hiring and supervision, and "vicarious liability" (employer liability for the acts of its agents) against the church. The plaintiffs sought an award of compensatory and punitive damages, and attorney fees, plus interest and costs.

At the time of the incident, the church was insured under a commercial policy issued by an insurance company (the "insurer"). In response, the insurer tendered a claim to its insurer asking it to provide a legal defense. The insurer agreed to defend the matter, and retained a law firm to do so, but also expressly reserved its right to deny coverage and refuse pay-

ment of any claim.

The case proceeded to a trial, and the jury returned a verdict in favor of the plaintiff against the church. The jury awarded $764,535 in compensatory damages and $5 million in punitive damages, and attorney fees.

The insurer declined to pay any portion of the jury verdict, prompting the church to sue it for breach of contract and "bad faith." Specifically, the church alleged that the insurer improperly refused to indem-
nify it for any portion of the judgment awarded to the plaintiffs.

The Ohio Supreme Court, on appeal, focused on an "Abuse or Molestation Exclu-
sion" (the "exclusion exclusion"), that stated:

Insurers do not apply to "bodily injury," "property damage," and "personal and advertising injury" arising out of:

1. the actual or threatened abuse or molestation by anyone of any per-

son in the care, custody or control of any insured, or

2. the negligent:

• A. Employment;

• B. Investigation;

• C. Supervision;

• D. Reporting to the proper author-

ities, or failure to report to, or e. Retention;

• of a person for whom any insured is or ever was legally responsible.

The question to be resolved, the court observed, was whether a "commercial liability policy containing an Abuse or Molestation exclusion is ambiguous that the damages arising out of abuse by 'anyone' of any person in the care, custody or control of the insured person is ambiguous that the insurer is responsible for the employee's abuse of a child in the insured's care and custody." The church insisted that only those dam-
ages awarded because of the direct liability of a wrongdoer and the direct liability of the employer would be excluded from coverage, not those damages based on the employer's vicarious liability for its employee's abuse.

The court began its opinion by noting that an "exclusion in an insurance policy will be interpreted as applying only to that which is clearly intended to be excluded. Any ambiguity not excluded by the policy is to be construed against the insurer and liberally in favor of the insured, particularly when the ambiguity exists in a provision that pur-

ports to limit or qualify coverage under the insurance policy."

The court noted that the "language of the abuse exclusion is broad" and excludes from coverage bodily injury arising out of "the actual or threatened abuse or molesta-

tion by anyone of any person while in the care, custody or control of any insured." It excluded from coverage actual or threat-
ed abuse or molestation. And it covers actual or threatened abuse or molestation by anyone. The exclusion eliminates coverage for "damages awarded for claims of bodily injury arising from actual or threatened abuse or molesta-

tion, investigating, supervising, or retaining the bad actor, as well as from negligent reporting, failing to report, the abuse or molestation to the authorities."

Significantly, the court did not find any "language in the abuse exclusion that limits its application to damages awarded for an intentional act of the insured." Instead, the exclusion includes an express denial of coverage for claims of secondary, or vicarious, liability. The court did not support the interpretation advanced by the church, i.e., that the policy must therefore cover vicarious liability. Nor does it render the exclusion ambiguous.

What This Means For Churches:

This case suggests that sexual mis-

conduct... Would it be seen that the plaintiffs have been "excommunicated themselves" from the church and informed them that their church membership had been terminated.

Subsequent to this letter the Luthern Church–Missouri Synod advised the leader-
ship of the plaintiffs' former church to hold a "special voters' meeting" so that the congregation might vote on the exclusion decision. The plaintiffs and approximately 80 church mem-

bers attended a "special voters' meeting" which was held on September 25, 2011. A pastor addressed the meeting, reading from a letter prepared in advance and published the August 22 letter to those present at the meeting. According to the plaintiffs, the pastor's remarks and the letter contained several defamatory statements, including:

• The plaintiffs were actively involved in slander, gossip, and spread unfounded statements about the pastors and board of el-

ders.

• The plaintiffs had intentionally at-

tacked, questioned, and discredited the integrity of the pastors and oth-

ers.

• Other people had observed the plaintiffs display anger and disre-

pect toward the pastor.

• The plaintiffs had publicly engaged in "sinful behavior" inside and out-

side the church.

• The plaintiffs had engaged in behav-

ior unbecoming of a Christian.

• The plaintiffs had been "ensnared in a public display of sin."

• The plaintiffs had refused to meet for the purpose of confession and for-
The plaintiffs had "refused to show respect" toward church leaders. The plaintiffs had led other people into sin.
The plaintiffs had engaged in slander and gossip and had refused to stop engaging in slander and gossip.
The plaintiffs had refused to follow the commands and teachings of God's word.

Following the pastor's remarks, ballots were distributed and the congregation voted to affirm the pastor's decision to terminate the plaintiffs' membership at the church. Following this meeting, a Missouri-Synod panel held a hearing to reconsider the plaintiffs' excommunication, and it also affirmed the plaintiffs' excommunication.

On August 16, 2013, the plaintiffs sued the pastor and church (the "defendants") claiming that many of the statements made about them were defamatory. The trial court concluded that the First Amendment deprived it of jurisdiction to resolve the defamation claim, and dismissed the plaintiffs' case. A state appeals court agreed with the trial court, and the case was appealed to the Minnesota Supreme Court. The case began its analysis by summarizing the leading decisions of the United States Supreme Court.

First, a court cannot overturn the decisions of governing ecclesiastical bodies with respect to purely ecclesiastical concerns, such as internal church governance or church discipline. Second, a court may not entertain cases that require the court to resolve doctrinal conflicts or interpret church doctrine. Finally, a court may decide disputes involving religious organizations, but only if the court is able to resolve the matter by relying exclusively on neutral principles of law, the court does not disturb the ruling of a governing ecclesiastical body with respect to issues of doctrine, and the adjudication does not interfere with an internal church decision that affects the faith and mission of the church itself.

The court noted that the plaintiffs had conceded that the majority of the statements detailed in their lawsuit could not serve as the basis for a defamation claim, since "adjudicating the truth or falsity of the statements would require the court to consider and interpret matters of church doctrine." For example, "a court could not decide whether the plaintiffs were engaged in a public display of sin without interpreting the meaning of the word 'sin' as a matter of Lutheran doctrine - a determination that would clearly be unconstitutional."

But the plaintiffs insisted that four of the statements referenced in their lawsuit could be adjudicated without violating the First Amendment: (1) that the plaintiffs "perpetuated falsehoods" about the church and its pastors, (2) that the pastors had received numerous complaints about the plaintiffs' slander and gossip, (3) that the plaintiffs accused one pastor of stealing money from the church, and (4) that the plaintiffs "committed 'breaches of confidentiality.'" The plaintiffs argued that a court could use neutral principles of law to determine the truth of these statements and, consequently, adjudicating a claim based on these four statements would not lead to excessive entanglement with religion. The defendants countered that allowing a court to adjudicate a claim based on statements made during a church disciplinary proceeding would unduly entangle the court with religion and interfere with the ability of religious organizations to govern their own affairs. To begin with, the defendants pointed out that because the statements were made during the course of a church disciplinary hearing, each statement has some religious meaning and a court could not simply sort so-called "secular" statements from "religious" ones.

The court conceded that this argument had merit:

Many of the statements the plaintiffs identified in their complaint were obviously religious in nature. Although other statements seem more secular in nature, it would certainly be difficult to differentiate between secular and religious statements, especially when the context in which the statements were made was clearly religious. A statement-by-statement analysis would be, at best, a difficult endeavor and, at worst, a court might be forced to interpret doctrine just to determine whether or not a statement had a religious meaning. It is precisely this sort of complicated and messy inquiry that we seek to avoid by prohibiting courts from becoming excessively entangled with religious institutions.

The defendants further asserted that the plaintiffs' claims were nothing more than an attempt to circumvent Supreme Court rulings and obtain judicial review of the decision to excommunicate them. The court responded:

There is no doubt that the First Amendment protects the right of churches and religious organizations to make decisions regarding their membership. To some degree, the plaintiffs' defamation claims are a request to evaluate the accuracy of the facts used to support the church's decision to excommunicate the plaintiffs. Some courts that adopt an absolute position on adjudicating suits arising out of church disciplinary proceedings reason that "the First Amendment's protection of internal religious disciplinary proceedings would be meaningless if a parishioner's accusation that was used to initiate those proceedings could be tested in a civil court." (Hills v. Episcopalian Diocese, 773 N.E.2d 929, 937 (2002)).

In essence, the defendants argue that immunity from defamation suits based on statements made during church disciplinary proceedings must necessarily be included within a church's First Amendment right to make membership decisions, lest that right ring hollow. The defendants stress that this is particularly true because exposing those proceedings and their participants to civil litigation will lead to a chilling effect. If church disciplinary proceedings are not shielded from the scrutiny of civil courts, there is a very real risk that those who participate will censor themselves in order to avoid liability or the threat of a lawsuit.

We hold that the First Amendment prohibits holding an individual or organization liable for statements made in the context of a religious disciplinary proceeding when those statements are disseminated only to members of the church congregation or the organization's membership or hierarchy. As a result, the district court properly dismissed the claims brought by the plaintiffs against the church and its pastors.

What This Means For Churches: This case illustrates the reluctance continued on page 22...
The trial court’s remarks in the present case do not evince any animosity, hostility, ill will, or distrust toward defendant. The court described the outrage felt in the community stemming from defendant’s crimes.

Society’s worst opponent is reserved for people who commit crimes like this…

These victims, these boys all came to you through church. The offenses were committed on church property. It happened more than once. They occurred while you were a minister. It is clear that you used the cloak of religion to gain access to your victims and to gain the trust of them and their parents…

Ordinarily we don’t have religion in court, that’s not a rule that I have made, but it’s the law. It does, however, seem impossible to avoid it in this case. And I have always thought ironically that the Bible, which is really a book of laws, is the only law book I know that doesn’t work in court. I have considered these letters… but I keep coming back to what you did.

You defiled 2 churches, 2 houses of the Lord with your depravity and you cast a pall over the entire community. You have subjected now the church to a lawsuit from one of the most outstanding lawyers in this city. They want over a million dollars and you brought that on your church by what you did to your parents and the community. You — how much is it going to be for ministers to gain the trust of poor children ever again? You have apparently driven at least one of these boys out of the church and away from God, that’s according to your testimony, and that’s your fault…

You might have started out in the church… but I think perversion is your true religion and you are its high priest, soliciting a bunch of scrubby little office of young men on the altar of depravity by you… There is nobody worse off, more in need of support, especially a minister who does it, who in his actions drives people from God and that’s what you did.

The defendant appealed, claiming that the trial court violated his constitutional rights by denying him a neutral and disinterestedly biased against him. In support of his claim, the defendant cited numerous examples of the court’s statements at sentencing. He claimed that these statements, including the court’s repeated references to defendant as a “pervert,” were sufficiently prejudicial to constitute a “judicial’s personal, political or religious animosity, hostility, ill will or distrust toward defendant.”

The defendant argued that the trial court improperly used its own moral judgment to determine the appropriate punishment for the defendant’s crimes.

The court of appeals rejected the defendant’s challenge, concluding that the trial court’s remarks in the present case do not evince any animosity, hostility, ill will, or distrust toward defendant. The court determined that the trial court’s statements were not sufficiently prejudicial to constitute a violation of defendant’s constitutional rights. The court found that the trial court’s statements were appropriately aimed at ensuring that the defendant’s punishment was proportionate to the gravity of his offenses.

In support of its conclusion, the court of appeals cited numerous examples of the trial court’s statements at sentencing. These examples included the trial court’s statements that the defendant was a “pervert,” that the defendant was a “sexual predator,” and that the defendant was a “twisted individual.” The court of appeals found that these statements were not sufficiently prejudicial to constitute a violation of defendant’s constitutional rights.

The court of appeals also noted that the trial court’s statements were not sufficiently prejudicial to constitute a violation of defendant’s constitutional rights because they were not based on the trial court’s personal moral judgment. The court found that the trial court’s statements were appropriately aimed at ensuring that the defendant’s punishment was proportionate to the gravity of his offenses.

The court of appeals therefore rejected the defendant’s challenge, concluding that the trial court’s remarks in the present case do not evince any animosity, hostility, ill will, or distrust toward defendant. The court determined that the trial court’s statements were not sufficiently prejudicial to constitute a violation of defendant’s constitutional rights. The court found that the trial court’s statements were appropriately aimed at ensuring that the defendant’s punishment was proportionate to the gravity of his offenses.
rhetoric, imposed a sentence signific-
antly under the maximum aggregate
term that defendant faced. Defendant
was convicted of using his position as a
youth pastor to engage in sexual contact
with two young boys. These crimes were
among others that he brought up in the
trial court. We hold that harsh criti-
cism, based on the particular facts of
defendant's case, is not an appropriate
criticism of any sort of evidence of prejudice
derived from personal bias.

Furthermore, the court's references
to religion did not reflect any religious
animosity or ill will toward defendant.
To be sure, the court's repeated refer-
cences to religion and church are more
than is commonly seen in a sentence-
hearing. However, these references were
plainly invoked by defendant.

The court's violations did not con-
stitute in mitigation, defendant's lengthy
[presumptive] statement was ripe
with religiosity. Having invited a sen-
tencing hearing tinged with religion,
defendant may not now argue that the
trial court's references to religion
deprived him of due process. More
importantly, a number of factors cited
by the trial court in aggravation are
clearly related to the fact that
defendant used religion to enhance
his victims, that defendant's crimes were
conceived in church property,
and that child pornography was found
on a church computer. On the facts of
this case, it is by no means
impossible for the court to avoid men-
tioning church or religion in sentenc-
ing. The trial court simply could not
reference those factors without ref-
erring religion. Defendant's claims
defendants claims that
the trial court harbored personal
bias against him are thus
affirmatively rebutted by the record.

What This Means For Churches: This
case is instructive for many rea-
sons, including the following.

First, it illustrates the importance of
the "two-adult rule" in church pro-
grams and activities. That is, a youth
and children's program must have
more than one adult present to
be applicable to all church property,
including the parsonage where the

youth pastor resided, and activities.
All pastors and lay youth workers
must be present. The case is
[applicable to] all church property
and instructed to report any
violations.

Second, churches should never allow
children or adolescents to spend
nights in the church, even if they are
employed as a private worker in a private
residence, parsonage,
or hotel room. The risk of
inappropriate conduct is too
great. Some churches relax the rules when
other adults are present, but this
seems to be a concern. For example, in
such cases is difficult, if not impos-
ible. Many minors have been sexually
molested under these circumstances
because the other adults are sleep-
ing or are in other areas of the
home.

Third, the defendant copied significant
amounts of child pornography on his
church computer. Church leaders
must proceed with caution when con-
templating searches of church-owned
computers used by church staff. The
United States Supreme Court ruled
in 2010 that employees have a legitimate
expectation of privacy in the
space and employer-provided com-
puter. City of Ontario v. Quon, 2010
WL 4207838 (U.S. 2010). But the Court
added that inspections of church-pro-
cated computers used by employees
cannot be justified if based on a
"legitimate work-related purpose" and
the search is not "excessively intrusive
in light of that justification." Church
leaders are advised to consult with
legal counsel before embarking on
the inspection of computers. People v.
Rademaker, 59 NE 2d 12 (Ill. App.
2016).

WILLS, TRUSTS, AND ESTATES

Key point 6-05.03: Church board
members have a fiduciary duty to
use reasonable care in the disposal of
treasuries, and to act in a manner
personally liable for damages resulting from their failure to do so.

NY

A New York appeals court
ruled that a provision in
the church's will that benefitted three
countries of investment of
interest to bank accounts and
government securities could be
expanded to allow other investors
offering the potential for a greater
rate of return. A church member died
in 1999, and his will made bequests to,
among others, three churches in the
amount of $172,000; $466,000; and
$260,000. The will directed each church
to hold the funds in trust, invest only
in income-producing investment
securities, and use the net income for
maintenance of the physical property
of each church. Because the return on
investments in insured bank accounts
and government securities has been
so low in recent years, the city in 2000
sued the church in an effort to amend
the will. The church argued that
investments in bank accounts and
restrictive trusts enable churches to
obtain a court order authorizing a
broader range of investment options.
In some cases, like this one, a court
will simply require a church trustee
to invest in a way consistent with the
"prudent investor rule."

An appeals court noted that a state
law provides that "whenever it appears to [a court] that circumstances have so
changed since the creation of an instrument
making a disposition for religious "...purposes as to render impracticable or impossible a literal
construction of the terms in the
work-related purpose" and the
search is not "excessively intrusive
in light of that justification." Church
laws should be advised to consult
with legal counsel before embarking
on the inspection of computers. People v.
Rademaker, 59 NE 2d 12 (III. App.
2016).

In this case, the court noted, the
defendent's intent was to provide each
church with a portion of his money
which would be generated to be
assisted in the maintenance costs
of the physical property
of each church. The churches sought
"limited additional authority regarding
the manner in which investments of
the principal are administered." They
were not seeking to be able to invest
in purely "prudential" purposes, and the
way the securities were divided
the security of the principal was
administered. They were not seeking
to be able to invest any money
prudentially. The court concluded:

[The churches] established that the
current investment restrictions have
for many years been a serious
liability for the church's mission.
New investments in insured bank
accounts and government sponsored
investments are clearly uneconomic
for any reasonable investment
strategy. The church's mission
cannot be furthered by relying
exclusively on income
producing investment
securities, and the net income from
these securities is too low in
recent years. Additionally, the
income from these securities is
negligible amounts. These restrictions
impose a significant and
extensive financial hardship
on the church's mission.

What This Means For Churches: Many
church members have left funds to
benefit the churches in their
trust in one form or another. It is not
uncommon for such trusts to restrict
investments of trust principal to
financially insured bank accounts or
government-sponsored securities. This
case demonstrates that those
restrictions deprive churches of
investment opportunities to obtain
a court order authorizing a
broader range of investment options.
In some cases, like this one, a court
will simply require a church trustee
to invest in a way consistent with the
"prudent investor rule."

This rule is recognized in every state,
with some variations. According to
a commonly cited definition, "trust-
ors must be prudent and vigilant and
exercise a reasonable care in the
management of the trust property.
They are to observe how persons of
prudence, discretion, and intelligence
manage their own affairs. They
are to be guided by the same
careful and deliberative purpose,
but in regard to the per-
manent disposition of their funds,
considering the probable income as
well as probable safety of the cap-
tal to be invested."

In re Estate of O'Connell, 185 S2d 1025 (N.Y. App.
2016).

Key point: Some courts interpret
charitable bequests in a testator's will
based on extrinsic evidence out-
side the four corners of the will.

CA

The California Supreme Court ruled that a dece-

cessful of any sort of restriction, limita-
tion or direction contained therein.

In this case, the court noted, the
defendent's intent was to provide each
court the probate court that the will was not
any more of the estate to the heirs. A state
appeals court affirmed the trial court's ruling.

The California Supreme Court
court. Their main argument was that
was amble "extrinsic" evidence
outside of the will indicating the
intent that would demonstrate the
defendant's intent to leave his estate to the
two
court's ruling, the case goes back to
the probate court for the process
to start all over again.

Church leaders who encourage mem-
bers to use church property for
estate planning should caution them
to utilize the services of an estate plan-
ing attorney. The church's wish
will be honored. In re Estate of

The court concluded that "a change in
the law is warranted to allow the for-
harmonization of an ambiguous will when
clearly and unmistakably the will
leaves the estate to two religious
charities, that the will is ambiguous.

The court acknowledged that
California law requires extrinsic
evidence to establish that a will is
ambiguous and to clarify ambiguities
in testamentary intent. It also
notwithstanding the authorization of
extrinsic evidence to correct a mistake
in a will when the will is unambiguous.

The court concluded that "a change in
the law is warranted to allow the for-
harmonization of an ambiguous will when
ambiguous will. It also

Q&A
Do Donor Envelopes Substantiate Contributions?
By Richard R. Hammari

Q:
I recently attended a "tax compliance" seminar for pastors and church bookkeepers. The presenter said that members' charitable contributions are not tax-deductible unless they are submitted in an offering envelope that meets strict requirements. Of course, he offered to sell "compliant" envelopes to the audience for an exorbitant fee. Could you please confirm my understanding that offering envelopes are not required in order for a contribution to be tax-deductible?

A:
In the past, offering envelopes assisted donors in substantiating cash contributions of less than $250. Offering envelopes no longer can be used for this purpose. The tax code now states that all cash contributions, regardless of amount, must be substantiated with:

- a bank record (such as a canceled check);
- a written communication from the charity showing the charity's name, date of the contribution, and the amount of the contribution; or
- payroll deduction records.

Offering envelopes will not satisfy these requirements and cannot be used to substantiate a donor's cash contributions. So, the information you received at the "tax compliance" seminar was wrong and should be disregarded.

Consider the following example. A church member ordinarily contributes cash (in church envelopes and in individual amounts of less than $250) rather than checks. Since the member will have no canceled checks to substantiate her contributions, she must rely upon the periodic receipts provided by her church. If the church does not issue the member a written acknowledgment showing the church's name, date of the contribution, and the amount of the contribution, the member will not be able to deduct any of her cash contributions. The offering envelopes will not suffice.

Even so, many churches use offering envelopes. They have a number of advantages, including the following:

- they help the church connect cash contributions to individual donors;
- they promote privacy in the collecting of contributions;
- they give members the opportunity to designate specific programs or projects;
- they provide members with a weekly reminder of the need to make contributions and honor pledges; and
- they reduce the risk of offering counters pocketing loose bills.
Compiled by Emily Lund, Assistant Editor

In Brief

Illinois Conversion Therapy Ban Doesn’t Apply to Pastors

Court says pastoral counseling isn’t "trade or commerce."  

**Conversion Therapy Ban Not Applicable to Pastors**

"In Pastors Protecting Youth from Madigan ... an Illinois federal district court held that Illinois's Youth Mental Health Protection Act restricting conversion therapy does not apply to religious pastoral counseling. The Act bars mental health providers from offering conversion therapy to minors and prohibits anyone from deceptively offering conversion therapy in trade or commerce. The court concluded that private religious counseling is not "trade or commerce" ("Illinois Conversion Therapy Ban Doesn’t Apply to Religious Pastoral Counseling," Religion Clause)."

North Carolina Approves Weapons Bill for Certain Churches

"The state House approved a bill ... that would allow people to carry a concealed weapon at certain churches. Republican Representative René Turner says a local church leaders group sought the bill after the shooting at Emanuel AME in Charleston (SC). They said their security team would be unable to protect the church, and ... And, after that shooting in Charleston, they were just very concerned about their safety and security and churches not being able to get ... And, after that shooting in Charleston, they were just very concerned about their safety and security and churches not being able to get the protection that they felt they needed."

**SCOTUS Case Could Redefine IRS Interpretation of 'Church'**

"A Supreme Court case about retirement plan profits could help surgeons avoid legal consequences for America’s religious communities. In parsing the legal language, justices may need to redefine what counts as a church. Advocate Health Care Network v. Stapleton centers on what types of employers are considered religious—or at least related, financially speaking—to a tax-exempt institution; religious leaders have been struggling to get clarity on that question from the IRS."

Texas Diocese Sued After Fatal Carnival Accident

"The Catholic Diocese of El Paso is being sued by the family of a teen who was killed in a carnival ride accident last Sunday. The Diocese runs its annual carnival each April, and this year's event was being held at an old school building that the Diocese owns in El Paso. The Diocese had not been notified about the school's plan to use that building for the carnival, and the school district had not given the Diocese permission to use the building for the carnival. The family of the teenager who was killed in the accident has filed a lawsuit against the Diocese, alleging that the Diocese was negligent in failing to ensure the safety of the carnival ride. The family is seeking compensation for the loss of their loved one's life and for the pain and suffering that the family has endured due to the accident."

**Missouri Law Allows Religious Exemptions for Car Insurance**

"In 2009, Don Meier was a passenger in a truck that veered off the highway after a teenage driver crossed the center line. ... The truck crashed into a tree, and Meier, who was not wearing a seatbelt, was injured in the crash. Meier sued the teenage driver, Jonathan Schrock, for negligent operation of a vehicle, and Schrock was found liable for the accident. Meier then filed a lawsuit against his insurance company, Progressive Insurance Company, for failing to pay his medical bills. The case was appealed to the Missouri Supreme Court, which ruled in favor of Meier and awarded him $769,000 in damages. The court held that Schrock was negligent in operating the vehicle and that his negligence caused Meier's injuries. The court also ruled that the Missouri law allowing religious exemptions for car insurance was not violated in this case because Schrock was not a member of a religious group that could claim a religious exemption under Missouri law."

**Church and-State Debate Looms Over Church Without Funds for Repairs**

"When it came to speak at a $5,000 Community Preservation Fund article to fix the foundation at the Ashland United [Massachusetts] Federated Church, Town Meeting Moderator Adam Shuster was surprised at how many people had heard mention of the relatively small article was shot down, first by a hand count and, after a recount, by a machine vote. The church on Main Street will go without [community fund] money to help fix [the] decaying steps and foundations at the old and historic building. ... [M]ore residents sided with the speakers who said they wouldn't be comfortable authorizing town money for the church. The church in Ashland loses out on CPC money after church versus state debate," (TheMetrowestDailyNews).

**Church Organizes Confess to Church Vandalism**

"A stafforganizethasbeenarrestedin the post-election vandalism at an Episcopal church in Indiana—a incident that gen erally hasn’t been a concern in their favor. As a possible consequence of politically motivated hate speech, but one that prosecuters are trying to baffle with the arrest of someone who made drawings to mobilize others disappointed with the election results. Nathan Stag, 26, faces a charge of vandalism for his role in defacing the property of an Episcopal church in Indiana as an act of protest. Stag is a member of St. John’s Episcopal Church in Niles, Michigan, and is said to have vandalized the church with religious symbols and messages. The church has filed a complaint with the police, who have launched an investigation into the incident. The church is seeking to recover the damages incurred as a result of the vandalism, and the police are working to identify and arrest the suspect involved in the incident."

**Retirement Income Security Act (ERISA)**

"An ERISA exemption means the hospitals don’t have to report pension savings to the government or pay related premiums. But these exemptions concern the health care workers and employees because their church pension plans—which they say are underfunded by around $4 billion—aren’t exempted by the ERISA safety net. The workers who initiated the Supreme Court case assert that the plan’s exemption couldn’t exist without a federal law that would classify the hospital as a church. The Supreme Court pension case asks important question," (DeseretNews.com).

President Signs Religious Liberty Executive Order

"In early May, President Trump signed an executive order on religious liberty and conservatives celebrated the move as a victory for religious freedom. The order states that employers, including federal contractors, will not be able to penalize employees for exercising their religious beliefs. The order also states that religious groups will be allowed to refuse to provide services or goods to individuals based on religious beliefs. The order is a response to a Supreme Court decision that ruled in favor of a religious school that sought to fire an employee who was pregnant. The school argued that the employee was violating its religious beliefs. The order will protect religious freedom and ensure that religious groups are able to operate without interference from the government."

Bob Jones University Regains Tax-Free Status

"In a move that’s been more than two years in the making, Bob Jones University was finally allowed to enjoy the tax-exempt status it had been seeking. The University had been denied tax-exempt status by the IRS, which had ruled that the University was not a religious organization. The University had appealed the IRS decision, and in 2016, the U.S. Court of Appeals for the 4th Circuit ruled in favor of the University, finding that the IRS had erred in its decision. The University then filed a lawsuit against the IRS, and in 2017, the District Court ruled in favor of the University, finding that the IRS had violated the University’s religious beliefs by denying it tax-exempt status. The University has now regained its tax-free status, which will allow it to continue to receive funding from the federal government and other sources."
Tax Calendar
Chuches and Ministers Should be Aware of the Following Deadlines in July and August 2017.

**NOTE:** A date listed below for filing a return or making a tax payment falls on a Saturday, Sunday, or legal holiday (either national or statewide in a state where the return is required to be filed), the return or tax payment is due on the following business day.

**Semimonthly requirements**
- If your church or organization reported withheld taxes of more than $50,000 during the most recent lookback period (for 2017 the lookback period is July 1, 2015, through June 30, 2016), then the withheld payroll taxes are deposited semimonthly. This means that for paydays falling on Wednesday, Thursday, or Friday, the payroll taxes must be deposited on or before the following Wednesday. For all other paydays, the payroll taxes must be deposited on the Friday following the payday. Note further that large employers having withheld taxes of $100,000 or more at the end of any day must deposit the taxes by the next banking day. The deposit days are based on the timing of the employer's payroll. Withheld taxes include federal income taxes withheld from employee wages, the employee's share of Social Security and Medicare taxes, and the employer's share of Social Security and Medicare taxes.

**NOTE:** You must use electronic funds transfer to make all federal employment tax deposits. Generally, electronic fund transfers are made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, you can arrange for your tax professional, financial institution, or payroll service to make deposits on your behalf. If you fail to make a timely deposit, you may be subject to a 10 percent failure-to-deposit penalty. EFTPS is a free service provided by the Department of the Treasury. For more information about EFTPS, visit EFTPS.gov.

**July 30**
- Churches hiring their first nonminister employee between May 1 and June 30 may exempt themselves from the employer's share of Social Security and Medicare taxes by filing Form 8274 by this date (non-minister employees are thereafter treated as self-employed for Social Security purposes). You must have a religious objection to paying the employer's share of Social Security and Medicare taxes.

**July 31**
- Churches having nonminister employees (or one or more ministers who report their federal income taxes as employees and who have elected voluntary withholding) must file an employer's quarterly federal tax return (Form 941) for the second quarter of 2017 by this date. Enclose a check in the total amount of all withheld taxes (withheld income taxes, withheld Social Security and Medicare taxes paid by the employer, and the employer's share of Social Security and Medicare taxes). If less than $2,500 on June 30, 2017.

**Important Tax Developments**
Stay current on tax developments that affect your church and ministry. Order your 2017 edition of Richard Hammar's Church & Clergy Tax Guide now! To order this resource, call 1-800-222-1840 and ask for item L117. Or find it on ChurchLawAndTaxStore.com.

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Two ministers who operated a wedding chapel challenged the constitutionality of a municipal “public accommodations” ordinance in Idaho. They based their challenge on the fear of punishment for their refusal to perform same-sex marriages. The court dismissed the lawsuit on the ground that the plaintiffs lacked sufficient “standing” to pursue their claim in federal court. This case and its ramifications for churches are addressed in a Feature Article.


Members of a mosque sued other members for alleged financial improprieties. A New Jersey court ruled that the lawsuit must be resolved by binding arbitration. See the Recent Development under the topic “Arbitration” beginning on page 10.

A Maryland court ruled it was barred by the “ministerial exception” from resolving a wrongful termination lawsuit a dismissed minister filed against his former church. See the Recent Development under the topic “Clergy—discipline and dismissal” beginning on page 11.

The Ohio Supreme Court ruled that an exclusion in a church’s insurance policy for criminal or intentional acts precluded coverage not only for the person committing the wrongful act but also for the church, even though it was being sued for negligence. See the Recent Development under the topic “Insurance” beginning on page 18.

The Minnesota Supreme Court ruled that it was barred by the First Amendment from resolving a defamation claim brought by a married couple against their former pastor and church. See the Recent Development under the topic “Members—discipline” beginning on page 19.

An Illinois appeals court ruled that a judge’s harsh comments about a youth pastor who had sexually molested minors in the church were not grounds for a reduced sentence or new trial. See the Recent Development under the topic “Sexual misconduct by clergy, lay employees, and volunteers” beginning on page 23.

Notable Quote

Ordinarily we don’t have religion in court. That’s not a rule that I have made, but it’s the law. And I have always thought it ironic that the Bible, which is really a book of laws, is the only law book I know of that’s not allowed in court.

—Excerpted from a judge’s ruling in the sentencing phase of a convicted child molester who had served as a church’s youth pastor. People v. Rademacher, 59 N.E.3d 12 (Ill. App. 2016). See more from this case on page 23.