

Avoiding Liability when Disciplining Pastors or Church Members

A pastor resigns his position at Old Church, a prominent church that ordained the pastor several years earlier. Shortly thereafter, the pastor founds New Church in a growing neighborhood of the community. The pastor is ordained by New Church and begins his pastoral duties. Several years elapse, and rumors begin to circulate in Old Church that the pastor has engaged in marital and financial misconduct. The elder board of Old Church sends the pastor a letter threatening to rescind his ordination. The letter requests that the pastor appear at a hearing before the elder board to defend himself.

The pastor refuses to appear, and the hearing proceeds without him. The elder board considers the charges against the pastor and votes to rescind its ordination of him. The elder board informs the pastor of its decision by sending him a letter. The elder board is unaware that New Church also ordained the pastor, so the letter informs the pastor that he may no longer refer to himself as “reverend.” The letter concludes with the elder board’s assurance that they will pray for the pastor in the hope that he will be “reconciled to his wife.” Old Church sends a copy of the letter to the elder board of New Church. Upon learning of Old Church’s actions, the elder board of New Church suspends and eventually fires the pastor. The pastor then sues Old Church for defamation.

The First and Fourteenth Amendments to the United States Constitution provide some degree of liability protection to churches in matters of church discipline. The basis for this protection is the Free Exercise Clause, which has generally been interpreted to prohibit the courts from interfering in ecclesiastical controversies. Instead, the court will be bound by the decision of the church’s highest ecclesiastical tribunal, such as the church elder board.

Church disciplinary matters often involve ecclesiastical controversies and, thus, receive the protection of the Free Exercise Clause. To be an ecclesiastical controversy, however, church discipline must be conducted within certain parameters, otherwise the church risks liability. Defamation, which is communicating a false or misleading statement that injures the reputation of another person, is a common form of liability that threatens churches in these situations.

According to Illinois court decisions, the Free Exercise Clause will generally protect churches in disciplining a clergy member while he or she is employed by the church. An important exception to the general rule arises when a church does not follow its established disciplinary policies and procedures. This is because courts will decide controversies within a church only if they can do so by applying “neutral principles of law.” Therefore, the church should scrupulously follow its established policies and procedures in order to minimize the risk of liability exposure. Churches should also have good policies and procedures. It is prudent for churches to periodically review their policies and procedures with qualified legal counsel.

Churches face a greater risk of liability when they attempt to discipline clergy who are no longer employed by the church, as in the above example. This could arise where a pastor is

ordained by a church, but the pastor engages in misconduct after the pastor leaves the employ of the church. Under such circumstances, the ordaining church may desire to rescind its ordination of the former pastor, but it should exercise caution in doing so. Again, the church should verify that it has enacted good policies and procedures and scrupulously follow them in all disciplinary matters.

The church should also limit the scope of its disciplinary response to those matters over which it may validly exercise authority. For example, as illustrated by the above story, the church may rescind *its* ordination of the pastor, but the church should not create the appearance that it is also rescinding the ordination of another church. The church should also exercise care in disseminating facts related to the disciplinary matter. In the above story, it would have been safest for the church to simply disclose that it rescinded its ordination. Communicating any other facts about the church's disciplinary action could cause the church to unknowingly disseminate a false statement, creating potential liability for defamation.

Another form of church discipline involves church members. Illinois court decisions do not provide extensive guidance applying the Free Exercise Clause to church member disciplinary matters. However, a decision from Kansas provides detailed legal reasoning that has been cited by Illinois courts in similar cases. Illinois courts and courts in other states are not bound to follow the principles of the case, but such principles would most likely be persuasive. According to the case, a church has authority to discipline a member only as long as the person is a member of the church. If the person resigns or attempts to resign his or her church membership, the church's authority to discipline the member terminates immediately. The church risks liability for any act on behalf of the church that occurs subsequent to the member's resignation or attempted resignation.

The potential liability that churches risk by disciplining clergy or church members highlights the importance of developing and following sound policies and practices. Churches should consult with qualified legal counsel regarding such matters.

David L. Bea & Associates is experienced in representing churches in all facets of risk management, including church disciplinary matters. Please contact us if we can be of assistance to your church.

By Daniel J. Mays

The foregoing article was provided for general information and must not be relied upon as legal advice for any specific situation. The attorneys of David L. Bea & Associates are experienced in church law. If you have any questions, please do not hesitate to contact us.