



## **SEVEN THINGS ALL CHURCHES SHOULD HAVE IN THEIR BY-LAWS**

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### **#1: FORMAL MEMBERSHIP POLICY**

Churches should always have a formal process by which congregants become members. Churches enjoy substantial freedom under the U.S. Constitution to govern themselves as they see fit without fear of legal consequences. Courts “do not exercise jurisdiction over the internal affairs of religious organizations.”<sup>1</sup> Thus, the Free Exercise Clause of the U.S. Constitution protects church conduct, even where that conduct causes personal injury that would otherwise be actionable in court: “When the imposition of liability would result in the abridgment of the right to free exercise of religious beliefs, recovery in tort is barred.”<sup>2</sup>

But this freedom has limitations. “Only those ‘who unite themselves’ in a religious association impliedly consent to its authority over them and are ‘bound to submit to it.’”<sup>3</sup> So, in order for a church to claim immunity against a possible tortious act,<sup>4</sup> the alleged victim must be (or have been) a member of the church. This is very difficult to establish if the church does not have a formal membership policy.

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### **#2: PROCEDURE FOR MEMBER DISCIPLINE/MEMBERSHIP REVOCATION**

Generally speaking, a church cannot be held liable for disciplining a church member or terminating his or her membership. The Ninth Circuit (which governs California) has explained that “Courts generally do not scrutinize closely the relationship among members (or former members) of a church. Churches are afforded great latitude when they impose discipline on members or former members.”<sup>5</sup> There are exceptions, however. The most common is when a church disciplines a member/terminates a person’s membership because that person refuses to stop engaging in sinful behavior, and the church leaders reveal the sinful behavior to the

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<sup>1</sup> *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1037 (7<sup>th</sup> Cir. 2006).

<sup>2</sup> *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, 819 F.2d 875, 880 (9<sup>th</sup> Cir. 1987).

<sup>3</sup> *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 779 (1989); accord *Owen v. Bd. of Directors of Rosicrucian Fellowship*, 342 P.2d 424, 426 (Cal. App. 1959) (“A person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages, and customs”).

<sup>4</sup> A tort is any wrongful act that results in injury to another’s person, property, or reputation. Examples include breach of contract, assault, defamation, invasion of privacy, intentional infliction of emotional distress, etc.

<sup>5</sup> *Paul*, 819 F.2d at 883.

congregation. This can lead to claims against the church for invasion of privacy, intentional infliction of emotional distress, defamation, etc.<sup>6</sup>

There are some simple steps a church can take to help avoid such claims. First, a church should have each step of its procedure for discipline and membership termination explained in its bylaws. If the church believes that it may be necessary to reveal to the congregation the reason for the discipline/termination, it is essential that this be a part of that procedure. Second, as part of the process for becoming a member, a church should provide all prospective members a copy of the bylaws and have them sign a statement that they have read them. And, of course, the church should *always* follow the procedures in the bylaws.

If these steps are followed, then courts are much less likely to consider a tort claim against a church for its internal discipline process, unless the church's conduct was so "extreme and outrageous" as to justify intruding on the church's religious liberty.<sup>7</sup>

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### **#3: PROCEDURE FOR RESCINDING MEMBERSHIP**

Just as the church should have a written policy for terminating membership, it should also have a written policy for how members can disassociate from the church. Indeed, courts have held that church members have a First Amendment right to terminate their membership.<sup>8</sup> Once a member has rescinded her membership, she is no longer consenting to the church's doctrine. This could limit a church's legal protection if it is sued for disciplining someone after they have revoked their membership. With a formal revocation policy, it is easy for all parties involved, including the court, to identify when the membership was terminated – otherwise a court will decide on its own.

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### **#4: JOB DESCRIPTIONS AND RELIGIOUS GROUNDS FOR LIMITING EMPLOYMENT OPPORTUNITIES**

Federal law prohibits discrimination in employment on the basis of race, color, religion, sex, national origin, or age.<sup>9</sup> California non-discrimination laws are similar, but also ban discrimination on the basis of sexual orientation.<sup>10</sup>

However, the government is very protective of church autonomy and generally does not interfere with church hiring practices. Federal law exempts religious organizations and allows them to

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<sup>6</sup> See, e.g., *Snyder v. Evangelical Orthodox Church*, 216 Cal.App.3d 297, 307 (1989) (allowing case against church to go forward because the church's bylaws were silent about whether confessions could be revealed to the congregation).

<sup>7</sup> *Id.* at 309.

<sup>8</sup> See, e.g., *Guinn*, 775 P.2d at 776 ("Just as freedom to worship is protected by the First Amendment, so also is the liberty to *recede* from one's religious allegiance").

<sup>9</sup> See 42 U.S.C. § 2000e-2; 29 U.S.C. § 621 et seq.

<sup>10</sup> Cal. Gov't Code § 12921.

consider an applicant's religious beliefs in hiring for all positions.<sup>11</sup> And for hiring clergy, none of the federal non-discrimination regulations apply.<sup>12</sup> And under California law, religious non-profit organizations are entirely exempt from these regulations.<sup>13</sup>

However, should a dispute arise, churches can best protect themselves from discrimination claims if they provide job descriptions in their bylaws and include the religious grounds for limiting employment opportunities – especially if the limitations involve any of the categories listed above. Thus, if the church's beliefs require that only certain positions be held by men, for example, this should be stated in the bylaws with support from Scripture. This firmly establishes that there is a religious basis for the church's limitations on employment, and is unlikely to be questioned by a judge.

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#### **#5: STATEMENT OF RELIGIOUS BELIEF REGARDING MARRIAGE**

With the rise of same-sex “marriage,” domestic partnerships, and civil unions, churches are regularly being confronted with these marriage counterfeits and asked to recognize these relationships. This can arise in the area of employment (see previous section) and whenever churches offer classes, retreats, or other events designed for married couples. Churches should include in their bylaws a Biblical definition of marriage and a statement that marriage is the only legitimate and accepted sexual relationship. This will help protect the church if it is forced to terminate/punish an employee for engaging in unbiblical sexual relationships,<sup>14</sup> or if the church declines to allow an unmarried couple to participate in events designed for married couples.

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#### **#6: IDENTIFY GOVERNING BODY THAT IS THE SOLE AUTHORITATIVE INTERPRETER OF SCRIPTURE**

It is impossible to anticipate every doctrinal dispute that a church could encounter. Thus, churches should include a statement in its bylaws that its governing body (e.g. elder board, executive committee, etc.) is the church's sole authoritative interpreter of Scripture. This will allow the governing body to issue an interpretation of Scripture whenever a dispute arises that cannot be questioned by courts.<sup>15</sup>

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<sup>11</sup> *McClure v. Salvation Army*, 460 F.2d 553, 558 (5<sup>th</sup> Cir. 1972).

<sup>12</sup> *Id.* at 558-61; *Scharon v. St. Luke's Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8<sup>th</sup> Cir. 1991).

<sup>13</sup> Cal. Gov't Code § 12926(d); *also see Kelly v. Methodist Hospital of Southern Cal.*, 22 Cal.4th 1108, 1119 (2000) (“If [an employer] is qualified as a ‘religious association or corporation not organized for private profit’ (§ 12926, subd. (d)), it will be exempt from FEHA regardless of the nature of the employee's job or the type of discrimination it allegedly practiced”).

<sup>14</sup> *See, e.g., Gunn v. Mariners Church*, 2005 WL 1253953 at \*2 (Cal.App. 4 Dist. 2005). *Gunn* involved the termination of a worship pastor who was engaging in homosexual conduct. The pastor tried to argue that the church's doctrine did not prohibit homosexuality. But because the church was able to demonstrate otherwise, the court refused to second-guess the church's employment decision. *Id.*

<sup>15</sup> *Id.* (courts “cannot undertake...a mission” of finding what is and is not “moral” or “sinful” within the beliefs of a particular church).

## **#7: DUE DILIGENCE REQUIREMENTS FOR ALL VOLUNTEERS AND STAFF WHO WORK WITH CHILDREN**

Churches have a legal obligation to help protect the children in their care: “[C]hurches and the adult church workers who assume responsibility for the spiritual well being of children of the congregation, whether as paid clergy or as volunteers, have a special relationship with those children that gives rise to a duty to protect them from reasonably foreseeable risk of harm from those members of the congregation whom the church places in positions of responsibility and authority over them.”<sup>16</sup> Thus, churches need to do due diligence when selecting staff and volunteers to work with children. This could include conducting background checks and requesting references. It is also important to avoid situations where staff members or volunteers are alone with children.

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<sup>16</sup> *Funkhouser v. Wilson*, 950 P.2d 501, 509 (Wash.App. Div. 1 1998); accord *Evan F. v. Hughson United Methodist Church*, 8 Cal.App.4th 828, 843 (1992).